IN GOD'S IMAGE

Myth, Theology, and Law in Classical Judaism



YAIR LORBERBAUM

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The idea of creation in the Divine image has a long and complex history. While its roots apparently lie in the royal myths of Mesopotamia and Egypt, it was the biblical account of creation presented in the first chapters of Genesis and its interpretation in early rabbinic literature that created the basis for the perennial inquiry of the concept in the Judeo-Christian tradition. Yair Lorberbaum reconstructs the idea of the creation of humanity in the image of God (*zelem Elohim*) in the Midrash and the Talmud. He analyzes meanings attributed to *zelem Elohim* in early rabbinic exegesis and thought, as expressed in Aggadah, and explores its application in the normative, legal, and ritual realms, namely in Halakhah.

Yair Lorberbaum is a professor in the faculty of law at Bar Ilan University, where he lectures on the philosophy of law, Jewish law, and Jewish thought. He has been a guest lecturer at Yale University, Cardozo Law School, Princeton University, and NYU Law School, and he has served as the Gruss Professor of Talmudic Law at the University of Pennsylvania Law School. Professor Lorberbaum's book *The Image of God (Zelem Elohim): Halakhah and Aggadah* (2004) was awarded the Goldstein-Goren Prize for the best book in Jewish thought for 2004–2007.

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To Orly

Contents

Preface

In this book I have attempted to reconstruct the meaning attributed by the early Sages, or tannaim (10–220 CE), to the idea of the creation of man in the Divine image (Hebrew: *zelem Elohim*; henceforth referred to as Imago Dei, *zelem*, or "creation in the Divine image," "the image of God," or simply "the Image"). Our inquiry will focus upon two interdependent axes, one ideational-theological and the other normative-juridical. My goal is not only to present the meaning attributed to *zelem Elohim* in rabbinic thought as expressed in the aggadah, but also to demonstrate its practical application in the legal and ritual realm of halakhah. But halakhah and aggadah are not two separate, autonomous realms. On the contrary, the more deeply we delve into the literary sources of aggadah and of those halakhot dealing with the creation of man in God's image, the more apparent it becomes that these two realms are inextricably intertwined on both the literary and the conceptual levels, each illuminating and explicating the other.

The idea of creation in the Divine image has a long and complex history; it was discussed and expounded over the generations by numerous thinkers belonging to a variety of circles and philosophical disciplines. While its roots appear to lie in the royal myths of Mesopotamia and Egypt, it was the Biblical account of creation presented in the first chapters of Genesis that provided the basis for the perennial inquiry into this concept in the Judeo-Christian tradition. From the Bible, the idea found its way into various sources in Second-Temple literature, and it was given a broad and original treatment in the writings of Philo of Alexandria. The concept of Imago Dei subsequently emerged as a powerful idea in rabbinic literature, particularly in its tannaitic stratum. Contemporaneously, it also appeared in early Christian writings, initially in Paul's epistles and thereafter in early patristic literature. From that point on, it emerged as a pivotal foundation of Judeo-Christian thought and theology over the centuries, albeit with ever-changing meanings and implications and varying degrees of significance and centrality.

If the *zelem* idea seemingly all but disappeared from Jewish thought during the amoraic period (third–sixth centuries CE in Palestine and Babylonia), and even more so in the Geonic period (ninth–eleventh centuries), it reappeared at the forefront of medieval Jewish thought. Maimonides begins his philosophical work, *Guide*, with a comprehensive explication of Imago Dei, one that had a profound affect on numerous aspects of his philosophy and served as the basis for many of his halakhic formulations. Parallel to its development in Jewish philosophy, the concept enjoyed a renaissance in the early Kabbalah, constituting a basic thought structure in the Kabbalistic-mystical schools of Provence and Spain from the twelfth century on, when it was adopted by such mystics as Rabad (R. Abraham b. David of Posquières) and his son, Isaac the Blind, followed by the Gerona Kabbalists (R. Ezra, R. Azriel, and R. Asher b. David), Nahmanides, and his disciples. It likewise appears as a central doctrine in the Zohar literature. The idea was equally powerful in Lurianic Kabbalah, in Hasidism, in the writings of the Gaon of Vilna, and in those of R. Hayyim of Volozhin – to mention but a few of the schools and major figures of Jewish thought from the fifteenth century onwards – nor is it absent from modern Jewish thought.

Imago Dei, in its varieties and offshoots, is a constitutive concept in Christian thought as well. As mentioned, it is central in the writings of the early Church Fathers, as well as among later Church Fathers, such as St. Ambrose, St. Athanasius, and St. Augustine, as well as in St. Thomas Aquinas, in such Reformation figures as Luther and Calvin, and among Christian theologians from the Enlightenment until the twentieth century.

Nor is the influence of Imago Dei confined to theological and religious writings. From the Judeo-Christian tradition it found its way into the European Enlightenment, and it is also present in contemporary Israeli cultural and political discourse.

The idea of creation in God's image is a crossroad at which fundamental issues in religious thought intersect. It integrates conceptions relating to God and his attributes (theology) and to man (anthropology) with a conception of representation (relating to the icon, *zelem*), illuminating the connections among them. Indeed, there is perhaps no other idea that brings humanity and God into such a close "encounter." Moreover, the concept of man being made in the divine image bears directly upon ethics, jurisprudence, and halakhah, to the extent that it has been argued that these are its central foci. In this book I have endeavored to shed light upon the varied and complex aspects of the concept of *zelem Elohim* in tannaitic sources, devoting particular attention to its halakhic ramifications. My decision to study this topic in tannaitic literature, specifically, was based not only on the immense wealth of ideas found there, but on the fact that, insofar as we are concerned with the concept of man's creation in the image of God, tannaitic literature serves as the source and foundation for all of the later development of ideas and norms in the Jewish tradition.

This book originated in a doctoral dissertation submitted to the Hebrew University of Jerusalem, subsequently published in expanded form in Hebrew under the title *Zelem Elohim: Halakhah ve-Aggadah* (Jerusalem–Tel Aviv: Schocken, 2004). The present English translation is based upon that version, albeit in somewhat abridged form, omitting primarily those sections and notes which were deemed less relevant to the English-speaking reader. My thanks go to Michael Prawer, who translated the text, and to Yehonatan Chipman, who edited it.

Quotations of Biblical texts were taken from the Revised Standard Version. Other classical Jewish texts – Mishnah, Talmud, Midrash, etc., – were taken from standard translations, as cited in the notes. In both cases we took the liberty of altering the published translation in light of our own understanding of the texts and their use in the context of our discussion.

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Yair Lorberbaum
Jerusalem
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Introduction

1. "BELOVED IS MAN, FOR HE WAS CREATED IN THE IMAGE" – THE PROBLEM

He [R. Akiva] also said: Beloved is man, for he was created in the image [of God]; a greater love was bestowed upon him, [that] he was created in the image, for it is written, "In the image of God made He man." (Genesis 9:6)[1]

According to R. Akiva, not only was man created in the Divine image – a factual Biblical determination; he adds that his being created in God's image is the reason for man's being beloved: furthermore, "he was accorded a greater love." To prove this conclusion, R. Akiva cites the verse "In the image of God made He man." R. Akiva's statement raises questions on a number of levels. We will begin with the exegetical one: How does man's creation in the divine image teach us that man is beloved? Moreover, who is it (he) that loves him and accorded him that "greater love": man, God, or perhaps both?

R. Akiva's homily is based on a dual emphasis: (a) God's creation of man, and (b) his being created in His image. In Akiva's view, the mere fact that God created man attests to His affection for him, for it is only natural for God to have particular affection for a creature that was shaped, by divine fiat, in His own image. As Rashi comments *ad loc.*, rewording Akiva's dictum: "With greater love did He love him, for He created him in His own image." This provides an answer to the second question as well: It is *God* who has bestowed this greater love on man. And why does *man* merit God's greater love? Because God loves the one who resembles Him – the one He created in His own image. The core of R. Akiva's dictum is God's love for Himself and, by extension, His love for those who resemble Him, as a result of which "man is [more] beloved" than other creatures. It thus follows that R. Akiva's observation is at least as

[1] *M. Avot* 3.14.

much concerned with God's love for man and the reason for that love as it is with the status of human beings as being beloved.[2]

This dictum raises questions of a more general nature. First: how did R. Akiva understand the term *zelem* ("image")? What type of relationship between Man and God does it convey? Second, what is meant by the term "beloved" (*haviv*): Is it a component of a sort of festive, abstract encomium to mankind and his intrinsic value, or was R. Akiva giving concrete expression to the Creator's love for mankind, in the sense of God's love being the source of a normative imperative? In other words, how serious was R. Akiva in his statement? Was it to remain an abstract ideal, "an idea destined to exert an influence only momentarily, not one sustained over time," to use Zunz's characterization of the Aggadah,[3] or does it reflect a worldview with normative – that is, halakhic – ramifications as to how life ought to be lived? If the idea does in fact have halakhic ramifications, in what realms is its influence felt? What was the meaning conferred to it in the halakhic context and what was its significance in the overall spectrum of halakhic and theological principles?

The central argument that I have attempted to substantiate in this book is that R. Akiva's teaching encapsulates a comprehensive worldview. R. Akiva's fundamental conception was that the Biblical idea of creation in the divine image means that the human being is an *eikon* of God – an icon in the sense prevalent in the ancient world, particularly in the Hellenistic and Roman cultures.[4] According to that view, the object, usually a divinity, is not only represented by its image, but is actually *present* in that image.

The uniqueness of Akiva's understanding, compared with the Hellenistic-Roman mindset and practices, does not lie in the meaning he ascribed to the term *zelem*. Both approaches shared the iconic understanding of the term, ascribing it an ontology of presence. The difference lies in the subject to which the term was applied. In the pagan world it typically referred to the relationship between a god and an icon made of wood, stone, silver, or gold. On the other hand, R. Akiva and his school – who according to certain midrashic sources were continuing an ancient tradition that dated back to Hillel the Elder – employ it to describe the relationship between God and man. According to that tradition, the human being – every human being – is an image of God, a veritable "extension" of the Deity.

Our reconstruction of the idea of Imago Dei in tannaitic literature demonstrates that it developed into a complex theosophical thought structure, diverse

2 For a detailed discussion of R. Akiva's statement, see *infra*, Chapter 7.III.

3 The citation is taken from Leopold Zunz in his description of "aggadah". See Zunz, *Sermons*, 32: 6.

4 The Biblical parallels to the Greek term *eikon* (*ikonin* in rabbinic Hebrew) are *zelem* and *demut*. For its semantic parallels in Akkadian and other Semitic languages, see Loewenstamm, "Beloved," and Clines, "The Image of God," 74. The claim that the Biblical concept of *zelem* has a similar iconic meaning has some merit and will be examined later in this study. In general, the vast corpus of exegesis that has grown up around the Imago Dei passage in Genesis does not explicate it in that way. See, however, Barr, "Theophany," 38.

aspects of which are reflected in a variety of halakhic statements. The application of the "image" concept to divine–human relations is reflected in the corpora of tannaitic law relating to the human being – his body and his personality. These applications give the concept its meaning, its significance, and its vitality.

One of the starting points for this reconstruction is therefore the halakhah, from which deductions are drawn regarding aggadic sources that allude to the idea of creation in the divine image. The aggadic sources, in turn, reflect back on the halakhic sources. In other words, not only does the midrashic and aggadic treatment of Imago Dei illuminate various areas of halakhah, both in terms of their general structure and their details, but the halakhah in its own right may also support specific hermeneutical preferences in the interpretation of obscure sources.

II. THE IMAGE OF GOD IN TANNAITIC LITERATURE – AN OVERVIEW

The main arguments to be made and substantiated in the following chapters shall be summarized here, with the aim of facilitating the reader's journey through the complexities and fine points of our reconstruction [of this idea]. We shall discuss numerous sources that require thorough philological, linguistic, exegetical, and hermeneutic examination. These efforts will ultimately determine the validity of the reconstruction, but their exposition may immerse the reader in a plethora of details, causing him to lose the thread of the argument, and obscuring the larger picture. It should be remembered, however, that the following survey is somewhat simplified and of necessity glosses over the nuances emerging from the source analyses in the full discussion.

Explanations of the concept of God's creation of human beings in the divine image generally attempt to intertwine concepts taken from three areas: (a) anthropology, (b) theology or theosophy, and (c) a theory of representation that illuminates the meaning of the term "image."[5] The tannaitic exegesis of the concept is no exception.

1. Explanations of the phrase "the image of God" generally focus upon what the exegete regards as essential or unique in the human being. The exegete's explanation is therefore indicative of his own anthropological conceptions.[6]

[5] According to Geiger, *Bible*, 332–334, the Imago Dei idea expresses only an anthropology. See also Urbach, *Arugat ha-Bosem*, IV, 70–80.

[6] On the various meanings that have been attributed to "the image of God" in the Bible over the centuries, see Clines, "The Image of God." Two comments are in order. First, the anthropological outlook implicit in the exegesis is not always that of the commentator, but may be one that the commentator attributes to the author of the Biblical "divine image" narrative. Second, the exegete's concept of Imago Dei may in some instances express only a partial anthropology, due to the constraints imposed by the theological component of the concept. Nonetheless, what is included in the theological element may be considered by that commentator as essential and unique to the human being.

This is as true of the tannaitic understanding of the term as it is of any other. For the tannaim, creation in the divine image refers to the concrete human individual. In their view, the term comprises all components of a human being – consciousness, personality, and body – all of which are organic elements of the flesh-and-blood person. This understanding of *zelem* differs from other approaches (those of Philo and Maimonides, for example), that detach the term from the realm of the physical and the concrete, confining it exclusively to the rational faculty, the soul, the conscience, or the like. These approaches are deficient in two ways: they restrict the "image" to a particular, partial aspect of the human being, and they premise it on an abstract foundation. The tannaitic interpretation of *zelem* is intrinsically related to tannaitic anthropology. According to the tannaim, who followed the dominant Biblical tradition, man is not composed of different substances, such as body and soul, flesh and spirit.[7] Even if these substances inhere in the human being, they saw no fundamental dichotomy between them.[8] Rather, they viewed man as a complex and multi-faceted creature, who is nonetheless one in his essence.[9] His personality – that is, his thoughts, feelings, sensations, and the like – is rooted in his being a creature of flesh and blood. The soul was understood by the tannaim as the animating principle of the body, not as a separate, non-corporeal entity.[10] Their rejection of a dichotomy between the personality/soul and the body is not rooted in any incapacity for abstraction. Rather, it derives from their perception that such abstraction is without substance; it is not commensurate with the essence of the human being as a concrete entity or with the "reality" of his personality.[11]

[7] On Biblical anthropology, see Pedersen, *Israel*, 1–181; Urbach, "*The World*," 248; *Urbach*, *The Sages*, 190; Flusser, "Dualism of Flesh and Spirit," 158; Uffenheimer, "Myth and Reality," 158.

[8] This concept is common in the Dead Sea Scrolls and in the New Testament, see Flusser, "Dualism of Flesh and Spirit," 158.

[9] Urbach, *The Sages*, 190–192; Urbach, 248; Smith, "The Image of God," 475; Boyarin, *Carnal Israel*, Introduction; Goshen-Gottstein, "The Body as Image."

[10] Obviously, I am not arguing that this description is appropriate to all of rabbinic literature, which spans some nine centuries. This study focuses on tannaitic literature, in which, as we shall observe, it is difficult to find expressions of any other stance, at least not among the circles of Sages to be examined here.

[11] These statements should be qualified somewhat, as Talmudic literature (including its tannaitic stratum) does recognize a distinction between body and soul. At the same time, we often find it emphasized that the fullness of human existence involves the presence of both together. A person is neither a body without a soul nor a soul divorced from a body, but rather an integration or fusion of body and soul. While a certain duality may thus be perceived here, it is different from the usual dualism (e.g., of the Platonic or Gnostic variety), which identifies the "essence" of a human being with the soul, while the body is viewed as a prison or a Satan from which the person (i.e., the soul) strives to escape in order to actualize its existence in a complete and satisfactory fashion. The impression given by many passages in Talmudic and tannaitic literature is much the opposite. Even in those passages which present the human being as comprising two distinct foundations, body and soul, his wholeness – his existence as a complete human being – consists of the combination of those foundations. This conception emerges, for example, from the parable of the blind man and the lame man in *Leviticus Rabbah* 4:5 (pp. 88–89), *Mekhilta de-Rashbi*

The tendency of the tannaim to stress the corporeal-figurative element of Imago Dei should not, therefore, be understood as a denial or diminution of man's personal – mental or spiritual – aspects.[12] The emphasis on man's corporeality is not based on any preference conferred to the body over the soul or personality; rather, it attests to their fusion within the concrete individual. This is how we should understand the fact that in both tannaitic and later Talmudic sources discussed in this study the physical aspect of the human being occasionally eclipses his other dimensions. Moreover, it was the assumption that the personality is a component of the body that led the tannaim to ascribe to the body feelings, sensations, and consciousness even after death. They are present – even if indiscernible – for as long as the body and its form exist. In their view, a person disappears from this world only when his body ceases to exist.[13]

2. The idea of Imago Dei also includes a theological or theosophical aspect. After all, "in the image of *God* He created man." The tannaim, like later interpreters, did not forego their own anthropological conceptions when explicating the theosophical content of this Biblical verse. Indeed, the tannaitic view of God is anthropomorphic:[14] the deity reflected in their writings possesses a likeness and an image and a comprehensive, complex personality. Insofar as God is "human" he is not perfect – at least not in the common philosophical-speculative sense of the term. Yet this theosophy does not divest God of extraordinary and supernatural attributes, such as immortality, the ability to perform miracles, rulership over the world, the ability to foresee or even determine the future, the adoption and shedding of appearances, appearing and disappearing, etc.[15] The anthropomorphisms that are so characteristic of Biblical and Talmudic literature should not necessarily be understood as metaphors or

Beshallah 15:1 (76–77), and other parallel sources. (See, however, the view of R. Hiyya cited later in that section of *Leviticus Rabbah* (p. 90), which I believe to be a minority view in tannaitic literature.

It should also be noted that this monistic concept of mankind underlies the belief in resurrection (the return of the soul to the body): the separate existence of the soul apart from the body is ephemeral and partial, while bodily existence (psycho-physical reality) is human existence in its fullness. In essence, then, this outlook is close to a monistic anthropology. Furthermore, in many sources in rabbinic literature that seem to distinguish soul from body, the soul is not a different, incorporeal substance without existence in space (as Plato conceives of the soul), inasmuch as it is subject to the properties of corporeal entities. For example, the soul can be burned and thus obliterated, something inconceivable within the classic dualistic conceptions. For sources on the subject, see Milikowsky, "Gehenna," 322–33. For similar approaches among early Christians, see Bynum, *Resurrection*, Preface, and the references there.

12 On this point in the Biblical context, see Von Rad, *Genesis*, 56.

13 See Lieberman, "After Life," section II. This concept can be traced back to the Bible; see Pedersen, *Israel*, 181.

14 The idea of the human being as an image of the divine is essentially anthropomorphic. Any approach that adopts or interprets it –whether in its most "vulgar" version or its more moderate versions, referred to as "anthropopathic" – falls into this category. The explanations later adopted by Abraham Geiger (see n. 5 above) are exceptions to this rule.

15 See, e.g., *Mekhilta de-Rabbi Ishmael* 130–131 (*Shirah*, 4), one among many such sources.

mere poetry. It is often more accurate to read these anthropomorphisms literally, or at least to interpret them as being based on the assumption of a personal deity possessing both form and likeness. Many of the Talmudic texts examined in this book are thus premised on a conception of deity referred to by some as mythic-theosophical.

Our analysis thus far indicates that, in analyzing Imago Dei, theosophy derives from anthropology. Yet it must be stressed: this derivation reflects the *ordo cognoscendi*, while the *ordo essendi* is in fact the opposite – anthropology derives from theosophy. In other words, according to the idea of Imago Dei, more than God is human, man is divine.

It follows then that the use of the term "anthropomorphism" may be misleading, inasmuch as in the study of religion it refers to the ascribing of human attributes to God. A slight change of emphasis is required: Imago Dei is not rooted in an anthropomorphic perception of God, but rather in a theomorphic perception of man.

3. In tannaitic literature the terms "image" (*zelem*), "likeness" (*d'mut*), "icon" (*ikonin*), and the like denote a particular kind of relationship between an object (a prototype) and its image or likeness. I will refer to this relationship as "presence" or "iconic." An iconic relationship exists between two concrete objects with a shared "image," in which one is the icon (or image) of the other. This relation of reflection is expressive of representation – that is, actual ontological presence. In other words, the prototype is actually *present* in its image or likeness.

This view of image as presence is not unique to rabbinic sources; it was prevalent in the ancient world. It could be claimed, with some caution, that in contrast to the modern mindset, the ancients had no conception of an absolute ontological divide between an object and its image. To use a Platonic metaphor, the image "takes part" in its prototype; it is a veritable extension of that prototype. The term "extension," like the phrase "takes part," is consonant with the idea of "image as presence," as both evoke the notion of an independently existent image that is metaphysically connected to its prototype. Not only does the conception of image as presence blur the demarcation between an object and its image; it also blurs the ontological differentiation between separate images, insofar as it presumes an inherent, intrinsic connection between different images of the same object, all of them being nothing but "limbs" or "extensions" (i.e., derivatives) of the same object.

We have thus far outlined three concepts: the corporeality of the prototype – the anthropomorphic deity; the tangibility of his image – anthropology; and the conception of image as presence – the concept of representation. These three concepts form the basis for many of the tannaitic sources that touch upon our subject. In the tannaitic view, Imago Dei is not only indicative of the similitude of God and man. That similitude further entails a metaphysics of presence. That is to say: because of their resemblance, God is actually present in man, who is in effect an "extension" of God on earth. As mentioned, the perception of man as

an image of God presumes a concurrence of anthropology and theosophy. In this context, inasmuch as the anthropology of the tannaim was monistic and their theosophy was anthropomorphic, it is not surprising that their understanding of "the image of God" embraced all aspects of the human being. In other words, the tannaim perceived the divine presence in the human being as permeating all facets of the individual person – mental and physical alike.

In Talmudic literature, the view that God is present in man finds expression in both the homiletic sources (aggadah) and the practical normative ones (halakhah). Another ramification of this idea is the ontological interrelatedness of the individuated images of God (human beings). This idea too left its imprint in the Talmudic literature.

4. According to the tannaitic theosophy of image as presence, the creation of man is first and foremost a divine need; God's desire to augment and magnify himself lead him to create man "in His image and likeness" – that is, as an extension of Himself. This was the motivation for the creation of man in the divine image and the source of the great severity involved in the prohibition on bloodshed in tannaitic halakhah, on the one hand, and the obligation to procreate and multiply, on the other. These precepts exemplify the theurgic dimension of the laws derived from the Imago Dei concept.[16] From these halakhot, and from related aggadic sources, we may deduce both directly and indirectly that actions performed on and by human beings influence God in both positive and negative ways. Accordingly, these halakhot may be described as "preventive theurgy" or "positive theurgy." I use the term "preventive theurgy" to denote prohibitions intended to prevent harm to God, while "positive theurgy" signifies obligations (usually positive commandments) to perform acts that support God, augment him, or expand his presence. As noted above, the idea of image as presence explains the theurgic consequences of these actions by virtue of their affect on other human beings. As such, it also had a decisive impact in determining the general rules and details governing some of the halakhic corpora mentioned above.[17]

In certain traditions in the pagan world, images also played a theurgic role.[18] Nonetheless, Talmudic theurgy is unique in its perception of man as the image of God. Hence, in the Talmudic tradition theurgic activity focuses on human beings, and not on icons of wood and stone. In contrast with the pagan traditions that developed theurgic practices for the initiated few,[19] the tannaitic tradition developed a normative legal-halakhic system intended for the public at large, on

[16] On the theurgic dimension of early rabbinic literature, see Idel, *Kabbalah*, 156–172. For additional sources see the Hebrew version of this book, 19, n. 17.

[17] As I have noted, the idea of "image as presence" undermines the unequivocal separation of those two realms.

[18] So it was in Hermetic theurgy and in that of Iamblichus (of Apamea), who was influenced by the Hermetics. On the former, see Fowden, *The Egyptian Hermes*, 134. On the latter, see Dodds, "Theurgy," 293; Luck, "Theurgy," 152; and Shaw, "Geometry," 57, and Chapter 3.III, below.

[19] See Lane Fox, *Pagans and Christians*, 207–208.

the basis of its conception of man as the image of God.[20] In doing so, it attributed (and also granted) each person the ability to influence God. Examples include the tannaitic innovations regarding the prohibition on *lex talionis* as a form of punishment (interpreting "an eye for an eye" in Exodus 21:24 as pecuniary compensation),[21] or the de facto abolition of capital punishment. Notwithstanding their apparent "modernity," in reality these approaches derive from the preventive theurgic dimension implied in the idea that human beings are created in God's image. Similarly, the positive obligation to procreate in Jewish law derives from the "positive" theurgic dimension of the same idea, since procreation has the effect of "expanding" the divine image, as opposed to diminishing it.

5. The idea of man as an image of God was of primary importance in the structure and formulation of the Talmudic discussions and halakhic norms relating to the human body. These include, *inter alia*, criminal procedure (primarily: the four modes of judicial execution and the attitude toward capital punishment), flagellation, punishments for inflicting bodily injury, laws regarding procreation, and others. In my analysis of some of these topics in Talmudic halakhah I have attempted to demonstrate how Imago Dei is a core concept, forming the ideational basis of both the general principles and the details of these topics. This analysis will explain the centrality of the idea of "the image of God" in tannaitic halakhah, especially when it competes with other halakhic principles.

While Imago Dei is of Biblical origin, it was given a radical interpretation in tannaitic literature, thus taking it far beyond Biblical law in determining the scope of its application. The halakhic corpora mentioned above verify this claim. Nonetheless, the Biblical source is vital for the clarification of the idea of "God's image" and its reconstruction in later tannaitic literature. At first glance, the tannaitic concept does not seem consistent with its Biblical source but, as we will demonstrate, the tannaitic theosophy of the image is basically an elaboration and extrapolation of the Biblical source, based on original and sophisticated hermeneutical devices.

6. Talmudic sources indicate that the concept of Imago Dei was disputed among the tannaim. One circle of Sages, which included R. Akiva, apparently received a tradition ascribing the aforementioned meaning to the Biblical account of man's creation. These Sages further developed this account and elaborated upon it but, most important, transformed the idea into a halakhic principle that figured in the formulation of various laws in relevant areas.

[20] Regarding the practices of rabbinic Judaism, I obviously do not intend to argue that all theurgic elements in rabbinic literature can be traced back to Imago Dei. Talmudic theurgy, a field that remains nearly unexplored, may be based on other theosophies as well. See Idel, *Kabbalah*, Chapter 7; and Mopsik, *Les grands* On the precise meaning of the term "theurgy" in this book, see Chapter 3.III.

[21] *Mekhilta de-Rabbi Ishmael*, 277 (*Mishpatim*, 8). On the "modern" nature of this statement, see Harris, *How Do We Know This?*, 259.

R. Akiva's view was disputed by R. Eliezer b. Hyrcanus, who was generally faithful to the "ancient halakhah."[22] R. Eliezer did not endorse the idea of creation in the divine image in its iconic sense. Moreover, it would appear that he rejected the very notion of man being an image of God. In R. Eliezer's view, there is neither connection nor continuity between God in Heaven and man on earth, and certainly no dependence of the supernal on the terrestrial. Together with the theosophy outlined above, R. Eliezer b. Hyrcanus also rejected the halakhic innovations based upon it. This conclusion is supported by the fact that, in almost every Talmudic discussion in which a new halakhah is derived from the iconic understanding of Imago Dei, we find a conflicting opinion of R. Eliezer or one of his students.[23] The sources attesting to the halakhic dispute are supplemented by additional sources. Hence we find that many of disputes between R. Eliezer b. Hyrcanus and R. Akiva in aggadic midrashim relate either directly or by implication to various aspects of the idea of man's creation in the image of God.

The roots of these conflicting opinions are discernible in earlier disagreements between Hillel and Shammai and their respective schools. Their disagreements were primarily over aggadic matters, but they also found their expression in halakhic matters as well. R. Akiva's core conception has its roots in statements attributed to Hillel the Elder, whereas the "Shammaite" R. Eliezer carried on the traditions attributed to Shammai.

III. THE STRUCTURE OF THIS WORK

The first part of this work (Chapters 1–4) is devoted to the discussion of a number of methodological assumptions that guided me in the process of reconstructing [the idea of *zelem Elohim* in Talmudic literature]. In the course of doing so, I shall attempt to explain and justify a number of considerations that constituted the background for this study and underlie its conclusions. The approach that I reconstruct from the tannaitic sources is, as mentioned, an anthropomorphic one. While in recent generations many scholars have tended

[22] Regarding R. Eliezer and his connection to the earlier halakhah, see Gilat, *R. Eliezer*, Chapter 1; Sussman, "History of the Halakhah," 70, nn. 237, 238.

[23] A number of scholars have questioned the authenticity of attributions of opinions to particular Sages in the Talmudic literature. While I doubt whether there is any basis for broad skepticism on the matter, in this study I have refrained from dealing with this question and other associated questions relating to historical reliability. I will premise (and qualify) my conclusion regarding "conflicting approaches" on what S. Lieberman refers to as "the literary truth" of the sources, as opposed to the "historical truth" to which they purport to relate (see Lieberman, *Studies*, 567). Nonetheless, the consistency evidenced in the respective approaches adopted by the Sages substantiates the view that the assumption of authenticity is well founded, taking into consideration the fact that their ideological roots in divergent traditions within the Oral law is born out and supported from other places as well (see, e.g., Gilat, *R. Eliezer)*. On the critique of the skepticism regarding the question of authenticity, see Sussman, "Urbach", 98–99; Stern, "Attribution." The research and studies expressing the skeptical approach are cited by Stern, ibid., p. 1.

to deny the presence of a corporeal conception of God within rabbinic thought, more recently a number of voices have emerged that do attribute such an understanding of God to the Sages. Nevertheless, the high road of Talmudic scholarship still rejects this idea, particularly regarding the issue of the Divine image. In light of this tendency, any approach attributing anthropomorphism to the Sages requires particular justification.

The first section of Chapter 1 is devoted to a critical survey of various widespread approaches relating to anthropomorphic expressions found in Talmudic research and their underlying assumptions. In this survey I show that the path taken by the mainstream of scholarship regarding this issue was derived from rationalistic theology, reaching its pinnacle in the thought of Maimonides. It will become clear from my discussion why I think one needs to free oneself from these assumptions and turn toward other directions of research. The idea of creation in the Image of God, even though it assumes an anthropomorphic conception of God, has a number of unique features. In the second chapter, I take note of several points that differentiate this issue from the broader issue of anthropomorphism. These distinctions will be useful in understanding various subjects to be discussed further along in the work.

This study poses two seemingly different questions: the one, the elucidation of the meaning of the idea of *zelem Elohim*; the other, the application of this idea in halakhah. The relation between these two questions is not self-evident – thus, at least, in light of those approaches widespread in the research literature concerning the relation between halakhah and aggadah in general, and the issue of *zelem Elohim* in particular. The mainstream of research in rabbinic or Talmudic literature has generally separated between them. This is certainly the case insofar as one is engaged in the study and interpretation of specific issues in halakhah and aggadah. The reason for this is rooted, among other things, in what seems to be a conceptual and phenomenological gap between them. If so, how can one claim a close relationship between sources taken from two distinct literary genres, seemingly based upon different kinds of reasoning, motifs, and means of expression, so different and distant from one another? What is the theoretical and methodological basis for drawing a connection between them?

Sections I and II of Chapter 3 are devoted to a critical description of the approach of research to the relationship between halakhah and aggadah in general, and the issue of *zelem Elohim* in particular, and to the various reasons that led scholars to draw a distinction between them. In Section III of this chapter, I suggest certain theoretical and methodological considerations that will ease in identifying the connections between them. These considerations will be applied further on in the section specifically concerned with the issue of the Image of God (Section IV).

One of the goals of this work is, as mentioned, the reconstruction of a structure of thought whose subject is the Image of God in tannaitic literature. The need for such a reconstruction in order to interpret the relevant midrashic and Talmudic sources in itself requires a certain justification. How can we

assume the existence of structures of thought as inherent in a literature whose main concern is the seemingly unsystematic, fragmented, and fragmentary interpretation of the Biblical text? Even if we assume that such structures of thought do exist in this literature, what is the methodology on whose basis it is possible to reconstruct them? How can we refrain from a reconstruction which, more than being based upon the sources, reflects the wishes or creative imagination of the scholar?

Chapter 4, which concludes the first part of the book, is devoted to a general methodological and terminological discussion, in which I suggest considerations related to the necessity of reconstructing structures of thought in rabbinic thought, and their manner of execution. The focus of this discussion is the meaning I attribute in this work to the terms "myth," "theosophy," and "theurgy," and their contribution to clarifying the theosophy of the Divine Image in tannaitic literature.

I hesitated whether or not to include these methodological discussions within the work, as they are liable to burden the reader and distract from our central concern, which is the analysis of those midrashic and Talmudic sources which pertain to the subject of the Divine Image. But upon further examination it became clear to me that it is impossible to separate these from the course of the study and from the manner of reading of the sources and their elucidation. These discussions are not only concerned with general methodological principles or with matters that are "external" to the subjects that are the central focus of this research, they focus primarily upon concepts and structures of thought that are closely related to the various aspects of the issue of the Divine Image in rabbinic literature. These discussions thus provide us with the phenomenological and conceptual framework by which the sources discussed below were selected from the great wealth of midrashic and Talmudic literature and according to which they were interpreted. Nevertheless, the reader who is not interested in devoting effort to them may skip directly to Chapter 5, in which we begin the discussion of the sources themselves.

Chapters 5–8 deal with the reconstruction of the idea of creation in the Image of God in tannaitic literature. In Chapters 5, 7, and part of Chapter 6 (Sections I–III), we focus upon criminal law and criminal procedures, concentrated primarily in the Mishnah of Tractates *Sanhedrin* and *Makkot*. The reconstruction begins in the Chapter 5, where we analyze the fashioning of the four ways of execution by the Court. This chapter presents two central arguments: a) that the way of putting criminals to death was shaped by the tannaim in such a manner as to prevent or greatly limit the bodily harm done to the condemned person, b) the methods of execution by the Court imitate the manner in which the tannaim understood the ways in which people are put to death by Heaven.

In Chapter 6, I argue that this move relates to the significance they attributed to the idea of creation in the Image of God. In the first section thereof I discuss sources that point in this direction; in the second section – which is to a large extent the heart and essence of the work as a whole – I discuss a variety of sources

that indicate the iconic meaning (i.e., the understanding of image as Presence) of the concepts "image" (*zelem*) and "likeness" (*demut*) in tannaitic literature.

Chapter 7 deals with the attitude of tannaitic literature to the crime of murder and to the death penalty. Murder was perceived by the tannaim (R. Akiva and his colleagues) as a "diminishing" the image of God and, in light of their perception of Image as presence, as impairing a dimension of God Himself. This view led them to take exception to the death penalty, as even the execution of a murderer – as well as the putting to death of other transgressors who are subject to the death penalty according to the Torah – harms the Divine Image. In the final section of the chapter, and as a direct sequel to the conclusions of the discussion with which it began, I shall demonstrate how the punishment of flagellation – which in tannaitic law substitutes for death at the hand of Heaven – and the punishment of one who has caused bodily injury to his fellow, were formulated in light of the concept of the Divine Image (Sections V–VI, respectively).

Chapter 8 focuses upon the claim that the commandment of procreation was also fashioned in tannaitic halakhah (once again, in the school of R. Akiva) in light of their understanding of the creation of man in the Divine Image. If those laws discussed in the previous chapters were concerned primarily with preserving or protecting the Divine Image and preventing its "diminution," in this chapter we discuss obligations concerned with expanding and augmenting the "Image." This approach emerges from a number of laws relating to procreation and marriage, from the liturgy that accompanies it (the seven Nuptial Blessings; *birkat hatanim*), and from further sources. The commandment to be fruitful and multiply, which was fundamental in tannaitic halakhah – according to one view, it is "the great principle of the Torah" – reveals the deepest aspect of the idea of creation in the divine Image within their teaching, and sheds additional light upon laws and sources discussed in earlier chapters.

Chapter 9 discusses the centrality of the idea of Imago Dei in tannaitic literature against its modest place in Second Temple literature. In this chapter, I propose the thesis that the rise of the *zelem* theosophy during the Mishnaic period was related to the Sages' response to the Destruction of the Temple – that is, to the withdrawal of God from His dwelling place, namely the Sanctuary. The idea of creation in the Image embodies a change in the focus of holiness: from the Temple to the human being. This idea, whose roots, it is true, are already to be found among the Sages during the Second Temple period and perhaps even earlier, provided an effective solution to the deep religious crisis that befell the Jews upon the destruction of the Temple. While God had removed himself from the Temple, He had not abandoned His people. To the contrary: in a certain sense he had drawn even closer, as He is "now" present in man who is made in His image.

1

Anthropomorphism in Talmudic Literature: Trends in Jewish Thought and Scholarly Research

I. "The doctrine of God's corporeality never occurred to the sages, may their memory be blessed, for even a single day"[1] – a reassessment

The thought structure reconstructed in this book ascribes an anthropomorphic perception of God to a broad range of midrashic and Talmudic dicta. The view characteristic of scholars in past generations – which has remained predominant in our own generation – was one of absolute denial of an anthropomorphic conception of divinity in Talmudic literature. This view may be regarded with some skepticism, because the reader of midrashic and Talmudic literature is invariably struck by the abundance of anthropomorphic expressions, which at times are strikingly vivid and bold. Indeed, one searches rabbinic literature in vain for observations concerning God that are not couched in anthropomorphic terms, or which do not at least assume or imply God's endowment with human attributes (physical and/or mental). While I do not claim that such statements are not to be found, it is nonetheless difficult to dispute the assessment that the number of Talmudic and midrashic expressions concerning God that proscribe his description in human terms is significantly less than the number of contrary expressions that ascribe to God a distinctly and surprisingly human image and characteristics.

How, then, did scholars confront the tremendous variety of anthropomorphic statements interspersed throughout the Talmudic and midrashic corpus? The following survey is a description of the various exegetical techniques employed in the scholarly literature to purge Talmudic literature of all its anthropomorphic elements. Our central focus will be on the scholarship of the past two or three generations, in what is generally referred to as "Jewish studies," but we shall also refer to positions taken by some of the leading lights of

[1] *Guide*, I.46, 102.

the older *Wissenschaft des Judentums*.[2] The survey in the following sections may not be exhaustive, but it ought to suffice to provide a clear delineation of the path adopted by the main trend of contemporary research on the subject.

Anthropomorphism in midrashic and Talmudic literature has not been extensively researched and the quotations that I have selected are for the most part tangential observations appearing in studies devoted to a broad spectrum of subjects. Consequently, the principled, sweeping, and unequivocal nature of many of these comments, and particularly their authoritative tone, is quite puzzling. In fact, the only comprehensive study of anthropomorphism undertaken since the dawn of *Wissenschaft des Judentums* until the mid-1980s is that of Arthur Marmorstein[3] (consisting primarily of an assiduously gathered and impressively large collection of Talmudic material). Notably, his conclusions differ from, or more precisely directly contradict, the conclusions of the scholars cited later in the chapter.[4]

It is difficult to overstate the centrality of this subject for an understanding of early rabbinic thought. As in all other religious traditions or cultures, belief in God is the cornerstone of the Sages' world. In addition to the intrinsic importance attached to the elucidation of their views of God and the attributes predicated of him, the conclusions of such an inquiry also affect a host of other matters, in the realms of both theology and halakhah.

1. Historical Background

The historical context is important for understanding the confrontation between scholarship and the phenomenon of anthropomorphism in Talmudic literature. The tendency to remove anthropomorphism from Jewish tradition in general, and particularly from rabbinic literature, began neither with modern Jewish Studies nor even among the scholars of the *Wissenschaft* school who preceded it. Rather, it originated during the Geonic period, at the end of the first millennium, when the Greek philosophical tradition, mediated by Arabic philosophical writings, began to penetrate the Jewish tradition. Internal developments (the Karaite critique)[5] and external pressures (the Muslim critique)[6] caused increasing perplexity among Jewish scholars upon confronting the anthropomorphic expressions abounding in Jewish sources, particularly in its sharpest and most radical manifestations, as in the work known as *Shi'ur Qomah*.[7]

[2] See Sussman, "Urbach," 13 and the references there. Cf. Myers, "Crisis of Historicism."

[3] Marmorstein, "Anthropomorphism."

[4] Stroumsa, "Form(s) of God," 269; Sussman, "Urbach," 71.

[5] See Heschel, *Theology*, xxv; Saperstein, *Decoding the Rabbis*, 1–6, and note at 213–255; Frankel, *Ways of Aggadah*, 504 ff.

[6] Altmann, "Moses Narboni's Epistle"; Saperstein, *Decoding*, 1–3; and Frankel, *Ways of Aggadah*.

[7] See *Shi'ur Qomah* (in the *Merkebet Shelomo*,) 38b; and see Altmann, "Moses Narboni's Epistle," who reviews the history of attitudes toward *Shi'ur Qomah*, which gained its stature primarily because of its statements and dicta attributed to Rabbi Akiva.

The consternation occasioned by this work, ascribed to the preeminent tannaim R. Akiva and R. Ishmael, led some of the Geonim, including Saadya Gaon, to claim that it was a forgery.[8] The nature of the anthropomorphisms found in *Shi'ur Qomah* is indeed unique, radical, and perhaps even unrepresentative, but the Geonim's attitude to this work reflected their general attitude to anthropomorphic expressions in both the Bible and the midrash. The entire corpus of aggadic literature was a source of perplexity to the Geonim, but its frequent employment of anthropomorphism was particularly perturbing. In this context, Hai Gaon (Babylonia, early eleventh century) wrote:

> This is an aggadic statement, and of all such statements the Rabbis declared: "One is not to rely on aggadic statements" . . . And any such statement of a similar nature made by the Rabbis was not intended to be understood literally, but rather as a parable and a metaphor for things known to our minds by what the eye beholds. For inasmuch as "the Torah speaks in the language of men" and prophets speak in homilies such as "God's eye" and "God's hand," they are not intended to be understood literally, but as metaphor and the language of men, and this is the way we should treat aggadic statements.[9]

Other medieval authorities, among them the Geonim Sherira and Samuel b. Hofni (Babylonia, late tenth century) and R. Hananel (North Africa, early eleventh century), likewise endorsed this approach.[10] However, more than dealing with aggadah by interpreting it in a contrived, nonliteral fashion, the Geonim simply tended to avoid dealing with it.[11] As Maimonides' son Abraham observed, "The midrashim and homilies and interpretations of verses . . . are few and obscure for most of those who study Talmud, and most of the commentators have not dealt with them and have not fathomed their secrets."[12]

In his *Book of Beliefs and Opinions*, Saadya Gaon develops varied exegetical techniques for the removal of anthropomorphisms from the Jewish canon.

[8] This opinion is attributed to Saadya Gaon by Yehudah ben Barzillai, *Perush Sefer Yetsirah*, 20–21, and see Altmann, "Moses Narboni's Epistle," 182. Maimonides was of the same opinion; see Altmann, "Moses Narboni's Epistle."

[9] *Otsar Ha-Geonim*: *Ber* 59a.

[10] *Otsar Ha-Geonim*: *San* 11b, *Hag* 11a (Sherira Gaon), *Hag* 4b (Samuel ben Hofni), *Hag*. 12a–b (Rabbenu Hananel). For a discussion of the general direction taken by the Geonim, see Heschel, *Theology*, I:35–37; Frankel, *Ways of Aggadah*, 504–507; Saperstein, *Decoding*, 12. See also Bar-Ilan, "The Hand of God;" Bar-Ilan, "Crowning God."

[11] A central aspect of this strategy is the disengagement of halakhah from aggadah, focusing on the former and downplaying the latter. In this vein, Samuel ben Hofni writes in an epistle from the year 985: "Even though our [esteemed] predecessors [among] the Geonim, may they rest in Paradise, used to write in their compositions words of aggadah and blandishments and enticements to cajole you into generosity and entice you to be generous, we ourselves have paved other paths, writing halakhot and oral traditions. These are the fine flour; the aggadot are the chaff" Assaf, *The Geonic Period*, 283. On the Geonic severance of halakhah and aggadah, see Lorberbaum, *Zelem*, 58–60.

[12] Treatise on the Rabbis' Homilies, by Rabbi Avraham b. Maimonides [Hebrew], in *Kovetz Teshuvot Ha-Rambam*, fol. 39. See also Frankel, *Ways of Aggadah*, 504, 508.

Alexander Altmann demonstrated that Saadya oscillated between the allegorical method (*ta'wil*), borrowed from the Mu'tazilite Kalam, and the theory of "created Glory" (*kavod nivra*), his usual designation for theophanic descriptions in the Bible.[13] According to Judah Hallevi, some aggadot relate "tales of visions of spirits, a matter which is not strange among such pious men, who by virtue of their abstinence and spiritual purification merited the apprehension of such forms, some of which were imagined, and others have real external existence outside the mind, as those that were apprehended by the prophets."[14] R. Hananel took a similar approach.[15]

However, it was Maimonides, the foremost adversary of anthropomorphism in the Jewish tradition, who brought this tendency to its peak, providing it with its most consummate and comprehensive expression. Most of his *Guide*, along with significant portions of his other writings, was devoted to the refining and development of arguments and exegetical-hermeneutic tools for expunging the Bible, and midrashic and Talmudic literature, from any form of anthropomorphism. We shall presently observe that modern scholarship also has adopted these techniques in its research and exegesis of rabbinic literature. Maimonides' influence on research and thinking on this issue is discernible in the forms of argumentation and exegesis, in the examples adduced, and even in its terminology. Modern scholarship on expressions of anthropomorphism in Talmudic literature can thus be characterized as a direct continuation of the Maimonidean rationalist tradition of interpretation.[16]

[13] See his *Beliefs and Opinions*, II.10, and cf. Altmann, *Studies*, 145–147; Wolfson, *Speculum*, 126–127.

[14] *Kuzari* III.78, p. 195. See also IV.3, 199–212.

[15] See R. Hananel's commentary to Babylonian Talmud, Vilna Edition, *Berakhot* 6a–7a and his commentary to *Sefer Yetsirah*, cited in Yehudah ben Barzillai, *Perush Sefer Yetsirah*, 32–33; Saperstein, *Decoding*, 13; and especially Ta-Shma, *Talmudic Commentary*, 133–134, and citations there.

[16] There were other traditions as well, in the Geonic period and later, that identified with the plain meaning of the spiritual world of the aggadah. Such, for example, was the approach of the liturgical poets in Italy and later in Ashkenaz (Germany and Northern France) and France, and also that of Rashi and the Tosafists; see the survey in Frankel, *Ways of Aggadah*, 511 ff. As for the Rabad (Rabbi Avraham ben David) of Posquières, see his famous comment taking exception to Maimonides, *Mishneh Torah*, Laws of Repentance 3:7. See also Harvey, "The Question of Incorporeality," 69–74, and his references there to scholarly studies. Worthy of note in this context is Rabbi Moshe Taku (of thirteenth-century Ashkenaz), in whose treatise *Ketav Tamim* he tirelessly collected anthropomorphic aggadic sources. The author insisted on both the straightforward reading of these sources and their authoritative nature, which was, in his view, second only to the Bible; see Saperstein, *Decoding*, 7, and Ta-Shma, "Nimuqei Humash," whose citations from R. Isaiah di Trani give the clear impression that many Ashkenazi rabbis believed in anthropomorphism, plain and simple. See, however, Urbach, *Arugat ha-Bosem*, IV.79–80. These traditions exerted almost no influence on the modern scholarly study of aggadah, especially on the issue of anthropomorphism.

2. Rejection of Anthropomorphism – The Structure of the Argument and Basic Assumptions

Modern scholarship has adopted numerous and variegated hermeneutic techniques for dealing with the anthropomorphic sources in rabbinic literature. Some regard these as popular folk literature, unrepresentative of the beliefs of the rabbinic elite over the centuries. Others postulated that they are nothing but views that were interposed into the midrashic and Talmudic collections by non-rabbinic circles. Another approach is that the anthropomorphic formulations in the midrash are literary conventions or "imaginative amusements," unrelated to serious theology. Yet another technique for confronting anthropomorphisms endorses the opposite view – that anthropomorphic statements are in fact profound esoteric expressions that exceed the boundaries of our understanding. In this view, anthropomorphic expressions were understood in midrashic literature as alluding to entities that inhere in the imagination, like a "prophetic vision" that can only be apprehended by the "inner eyes." A more common approach to the anthropomorphic expressions of the Rabbis is to read them as metaphors, allegories, parables, and the like. Metaphors and allegories of encounters with the divine, of God's attributes, of His actions, and even of God's negative attributes.

The path adopted by the majority of scholars was to identify a midrashic or Talmudic source for one of the methods of negating anthropomorphism specified above, and to then enlist that source as a paradigm or archetype for all anthropomorphisms in rabbinic literature. We shall presently see that this approach is defective on two counts. First, as a rule no justification is offered for conferring predominant, paradigmatic status to a particular source in terms of the interpretation of the entirety of rabbinic literature. Second, the source in question does not necessarily express that which is attributed to it. Many of the sources cited by scholars as proof of the Sages' rejection of anthropomorphism are more easily explained in a manner congruent with a human, corporeal conception of divinity. Moreover, some of those sources actually substantiate and buttress the contention that there were Sages who held anthropomorphic views.

One factor that nurtured the tendency in scholarship to purge corporeality from Talmudic literature is found in the midrashic references to God's lofty and exalted nature. Scholars tended to view such passages as reflecting an abstract conception of divinity, and others even viewed them as expressions of negative theology (i.e., refusal to ascribe attributes to God). While such midrashim may occasionally lend themselves to one or another of these interpretations, they should not be confused. Yehezkel Kaufmann distinguished between them when he stressed that Israelite belief elevates God, but nevertheless "ascribes form to Him." On the other hand, Kaufmann maintains that "abstraction" is "external to the problematics" of the Bible and the Talmud.[17]

[17] Kaufmann, *History*, II.229.

Indeed, there is no contradiction between an anthropomorphic conception of God and the perception of God as distant, unknowable, and lofty. In fact, the two conceptions are interwoven, both in the Bible and in the rabbinic literature stemming therefrom.

In the following survey we shall address additional methods used for the rejection of corporeality and more and less sophisticated versions of the hermeneutic methods mentioned earlier. These methods are not mutually exclusive and are applicable in various amalgamations to the various sources, according to their contents and context. This was the method adopted by Maimonides and those scholars whose works we shall presently survey.

3. The Folk-Literature Thesis

There are those scholars who have maintained that anthropomorphic statements in the rabbinic sources, and aggadic literature in general, are addressed to the simple folk, the masses. Hence, they should not be regarded as a source of serious theology, at least not of that genre that was close to the Sages. This approach is expressed in the words of Joseph Heinemann:

> Many of the aggadists' explanations of the Bible are, then, metaphor and allegory; more than they are intended to explicate enigmas in Scripture, they attempt to take a stand on issues of the day, to guide the people and to strengthen their faith. However, since these expressions are directed toward a broad audience, toward the uneducated, toward women and children, problems cannot be expressed in an abstract way nor can profound theoretical answers be proposed. In order for their words to penetrate and be integrated into the listeners' hearts and minds, it is appropriate to grant them literary form, making extensive use of allegories and other such ways of thought and literary devices available to all [kinds of readers].[18]

Heinemann argues here that aggadah is essentially metaphor and allegory, intended for the inculcation of basic tenets of faith, which can be understood by all.[19] The aggadah is not a comprehensive explication of Scripture, nor does it express profound intellectual content. It is a literary corpus, and though of rabbinic origin, is intended for the general public "the uneducated, women and children" (this thesis will be referred to from hereon as "the folk-literature thesis"). The first one to develop the theory that the Bible and the midrash are intentionally couched in the language of the multitude and as such specifically directed at that audience was Maimonides. He writes in *Guide*:

> You know their dictum that refers in inclusive fashion to all the kinds of interpretation connected with this subject, namely, their [= the Rabbis'] saying: "The Torah speaks in the

[18] Heinemann, *Aggadah and Its Development*, 12.

[19] Heinemann's argument that the aggadah is folk literature would appear to explain his statement that aggadah is metaphor and allegory. However, one could understand them as two separate characterizations.

language of man."[20] The meaning of this is that everything that all men are capable of understanding and representing to themselves at first thought has been ascribed to Him as necessarily belonging to God. Hence attributes indicating corporeality have been predicated of Him in order to indicate that He, may He be exalted, exists, inasmuch as the multitude cannot at first conceive of any existence save that of a body alone; thus that which is neither a body nor existent in a body does not exist in their opinion.[21]

Further on, Maimonides stresses that the rabbinic dicta – "the language of man" – refers to the "imaginative faculty of the multitude."[22] He returns to this thesis in a number of places in the *Guide*, which constitutes one of the key methods employed by Maimonides for eliminating anthropomorphism from the Jewish tradition. The immediate target of Maimonides' remarks was Biblical anthropomorphism, but he also applies the thesis to anthropomorphic expressions in rabbinic literature. Indeed, his thesis itself derives its authority from the rabbinic statement: "The Torah speaks [in the language of man]." Accordingly, the Biblical literary forms ("the Torah speaks . . . ") are also ascribed to "all the kinds of interpretations (i.e., aggadah) connected with this subject." As is well known, Maimonides employed this method in his own writings as well.[23]

Heinemann does not expressly refer to anthropomorphism, but his references to "abstract matters" and "profound theoretical responses" also include anthropomorphic aggadic legends.[24] Nor are his comments based on the dictum that the "Torah speaks in the language of man," apparently because it was clear to him that in rabbinic literature this concept is unrelated to the rejection of anthropomorphism.[25] The thrust of Heinemann's argument is that, in contrast with halakhic literature, aggadic literature is folk literature and its creators are not necessarily "'popular' scholars."[26] A similar assumption was made by Nachman Krochmal. The gap between the rational views that he ascribed to the Sages and those that he actually found in the midrash and aggadah induced Krochmal to claim, rather outlandishly, that "the corrupted aggadot (i.e., those anthropomorphisms that he regarded as being 'on the level of popular or mass

[20] See, e.g., *Sifre Numbers, Shelah*, 121; *b. Ber* 31a; *b. Ker* 11a; *b. San*. 90b.

[21] *Guide* I.26 (56).

[22] Ibid., 1.33.

[23] Ibid., Introduction (17–20).

[24] Heinemann, unlike Maimonides (in other places in the *Guide* and in his other writings), does not note that, alongside the plain, "vulgar" sense of the aggadah, there is an esoteric meaning as well.

[25] Abraham Geiger and Isaac Reggio demonstrated that this statement was utilized in Talmudic literature not only for halakhic midrash; see *Otsar Nehmad*, I (1856–1857), 125, 159–160; and see Kaufmann, *History* II.236, n. 20. Maimonides was not the first to interpret that Talmudic statement as he did; see Hai Gaon (note 10), and *Hovot ha-Levavaot, Yihud ha-Shem*, I. 107, as well as Bacher, *The Aggadah of the Tannaim* I/II, p. 5, n. 6.

[26] See Heinemann's *Ways of the Aggadah*, 10; and Hirshman, "On Midrash," 86 n. 5. Joseph Heinemann sees the aggadah as something "created by rabbinic sages," a literary form whose *Sitz im-Leben* was the public sermon. He takes issue with those who argued that aggadah is entirely the work of popular homileticists.

discourse') are not the words of the rabbis, and were inadvertently filtered into the Talmud and the midrashim."[27]

Irrespective of their authorship – Maimonidean or modern – these theories suffer from the defect of being all-inclusive. The folk-literature thesis, as applied to aggadic literature in its entirety, can be understood in two forms: either the Sages' outlook was abstract and rational, that is, quasi-philosophical, or they had no interest in theology or abstract thought – in other words, they focused on halakhah and ethics and their creation in the realm of aggadah was exclusively intended to meet the needs of the masses.

Apart from the absence of direct evidence for either version of the folk-literature thesis, it is plagued by other difficulties as well. As for the first version: it assumes that the aggadic authors also created a parallel, higher literature, intending the former genre exclusively for the uneducated multitude. But the fact is that there is no actual record of such a higher literature having been created by the aggadic authors, many of whom are also halakhists.[28] As for the second version, it is tenuous to argue that the Sages were solely interested in matters of ethics and halakhah[29] (which together comprise the full scope of their "higher" literature) and that they were not interested in theological matters, particularly because this assumes (incorrectly) that Talmudic halakhah is divorced from theological concerns.

Yonah Frankel demonstrated that several aggadot had their roots in the *Beit Midrash* (Rabbinic Study House), thereby refuting the all-encompassing version of the folk thesis. Moreover, for Frankel these aggadot became the basis of a comprehensive and diametrically opposed thesis – that the *Beit Midrash* is the source of aggadah in its entirety! Marc Hirshman was correct, though, when he argued (against Frankel) that "only the compilation of a precise, properly classified catalog of the various derashot, in accordance with genre and content, can enable a conclusion as to whether this is a literary corpus belonging so exclusively to the *Beit Midrash*."[30] However, the problem with this proposal is the ambiguity of the term "folk" (or "popular") literature, the question being whether the "folk" connotation refers to its substance or its form. In one sense it refers to an interpretation whose substance is intended for the multitude although in fact rejected by the Sage who authored it. Alternatively, a "popular interpretation" may contain substance to which the Sage subscribes, despite the popular nature of its presentation. Conceivably, both understandings of the term

[27] Krochmal, *Guide*, Chapter 14: "The Aggadah and Its Authors," 254. Aggadah as a whole was, in his view, "public sermons on Sabbaths."

[28] See Lieberman, "How Much Greek?"; Feldman, "How Much Hellenism?"; and Harvey, "Rabbinic Attitudes."

[29] On the Rabbis' alleged lack of interest in theology see the references in Heschel, *Theology*, I:32, nn. 22–23. The same claim can be inferred from Lieberman, who, in "How Much Greek?," used it to explain the absence of philosophical discussions in rabbinic literature. Lieberman posits without substantiation (at least in this article) that the aggadic literature is not serious theology.

[30] Hirshman, "On Midrash," 86.

"folk" literature are relevant to aggadah, but there is no clear criterion for the classification of any particular aggadah within either one of these categories. Furthermore, regarding the latter view, it is unclear what would constitute a "nonfolk" way of presenting these ideas.[31]

For our purposes, the problem is not the folk thesis as such, but rather one of the arguments generally adduced in its support: namely, that the anthropomorphic midrashim are themselves of a patently folk nature and do not belong in the *Beit Midrash*. This sweeping rationalist contention requires proof, as this genre of midrash permeates the length and breadth of the Talmudic and midrashic literature, even in matters pertaining to halakhah.[32] I do not presume to refute the veracity of the folk literature thesis insofar as it may apply to certain portions of aggadic literature[33]; nonetheless, the anthropomorphism criterion is not an acceptable means of identifying these portions.

Regarding Imago Dei, we need not await the meticulous classification proposed by Hirshman; it is clear that the concept of Imago Dei, in its anthropomorphic sense, appears in both midrashic and aggadic sources that obviously originate in the rabbinic world. Furthermore, the image idea appears in halakhic sources that are indisputably the product of the *Beit Midrash*.

4. Poetic Language

Isaac Heinemann, in his *Ways of Aggadah*, writes:

> and it is this belief [that God desires the sacrificial worship in the Temple] that was the basis of several anthropomorphic midrashim. While it is true that there are biblical verses in which modern critics have seen a sort of anthropomorphism, these were understood in a spiritual sense both by the Aramaic Targums and by the Rabbis. It never occurred to them to interpret Genesis 18 in the sense that the Holy One was Abraham's guest. Their conception of the phraseology "God's image" is evidenced by their statement: "To he that is 'in Our image and according to Our likeness' [I say] *u-r'du*-'rule over'; and to he that is not 'in Our image and according to Our likeness' [I say] *yer'du* – 'let them descend' [i.e., human beings become as low as (or perhaps lower than) the beasts]" (*Genesis Rabbah* 8.12). Of the verse ". . . and they saw the God of Israel . . ." (Exod 26:10) they said, "Anyone who translates a verse literally is a fabricator," because "the Lord sees but is not seen."[34]

Heinemann views the Biblical expression "God's image" and its midrashic manifestations as examples of poetic language (*melitzah*). This understanding

[31] For a discussion of the folk aspect of aggadah that does not adopt the thesis that aggadah is entirely folk literature, see Hasan-Rokem, *The Web of Life*.

[32] See, e.g., Halbertal, *Revolutions*, 164–167, and see Chapters 5–9, of this book.

[33] See Abraham ibn Ezra's introduction to his commentary to Lamentations (in the standard Rabbinic Bible), and see Heschel, *Theology*, I:36.

[34] Heinemann, *Ways of the Aggadah*, 84. In this passage, Heinemann relies on the writings of Solomon Schechter, who shared this outlook.

empties the midrashim dealing with the topic of their theological and ideational significance.[35] It is in fact, given that the numerous references to Imago Dei in Talmudic literature would seem to justify the opposite conclusion, of doubtful veracity. Moreover, one is hard put to accept Heinemann's sweeping generalization to the effect that *all* the Talmudic Sages understood "the Image of God" as referring exclusively to the concept of dominion. Midrashic literature abounds with other references to God's image that prima facie are patently anthropomorphic. Heinemann's other contentions likewise warrant skepticism, particularly his sweeping, unequivocal generalization whereby "only the former [i.e., Biblical verses that deny the corporeality of the Godhead] attest [in the Rabbis' view] to the biblical conception."[36] One need only examine the chapter in *Genesis Rabbah* from which Heinemann drew one of his proofs, which itself contains several daringly anthropomorphic midrashim. For example, the homily of R. Hoshayah (with its allusion to God's image): "When the Holy One, blessed be He, created Adam, the ministering angels mistook him [for a divine being] and wished to exclaim 'Holy!' before him" (i.e., as they do before God – Isa 6:3).[37] Moreover, the statement cited by Heinemann from *Genesis Rabbah* is not in fact antianthropomorphic. Its apparent reduction of the "image" of God to "dominion" led Heinemann to conclude that the statement is a repudiation of anthropomorphism. But there are other, equally plausible conclusions, and this statement does not necessarily controvert other statements that emphasize the *zelem's* corporeal dimensions.[38] It is hence difficult to infer from it a definitively noncorporeal conception of God as such. The final proof adduced in the aforementioned paragraph is also inconclusive, for its sole assertion is that God is not visible. Heinemann assumes that this is because God is without form. But the midrash may arguably be based upon a different premise: namely, that God is invisible, but not by reason of formlessness; rather, He has a form but chooses to remain hidden from human vision. The concept of a Godhead that has a form but is not seen (for "tactical"[39] or other reasons) is firmly anchored in the Biblical text,[40]

[35] A similar direction is taken by W. D. Davies (although only parenthetically) who described the rabbinic statements about Adam as "playful fantasy and not serious theology." See Davies, *Paul and Rabbinic Judaism*, 53. This evaluation is surprising in light of Davies' own conclusion that these "fantasies" exerted a deep influence on Paul, a student of the rabbinic tradition, who made them into serious and powerful theology. See Davies, *Paul and Rabbinic Judaism*, 1, 55, 75. A position close to this is articulated in Schechter, *Theology*, 13: "The Rabbis ... show a carelessness and sluggishness in the application of theological principles ...."

[36] Heinemann, *Ways of the Aggadah*, 83. For an overall assessment of this book, *inter alia* as "an apologetic book," see Frankel, *Ways of Aggadah*, 557–558.

[37] Regarding this statement, see *Genesis Rabbah* 8:10; *Mekhilta de-Rabbi Ishmael, Shirata* 3 (126–127); *Mekhilta de-Rashbi*, *Beshalah* (78) 15:2; Altmann, "Gnostic Background," 36.

[38] This subject is discussed in *Genesis Rabbah* 8:11, in a gamut of different versions which indicate the unreliability of the *derasha*.

[39] Cherbonnier, "The Logic," 199.

[40] Kaufmann, *History*, 228; Halbertal and Margalit, *Idolatry*, 47.

and appears in midrashic literature as well.[41] Accordingly, nothing precludes it (and, by the same token, compels it) being the viewpoint expressed in this midrash.

As for Heinemann's claim that the Temple ritual "was the basis of several anthropomorphic midrashim," it should be noted that midrashic literature is replete with anthropomorphic depictions unrelated to the Temple. Moreover, I think that it can be shown that anthropomorphic expressions in the midrash, and especially those connected to Imago Dei, increased in frequency and depth specifically after the Destruction of the Second Temple – possibly in response to that event.[42]

The conception that aggadah is nothing but poetic language is already found in the writings of Maimonides, who wrote that:

> the manner of midrashim whose method is well known by all those who understand their discourses. For these [namely, the midrashim] have, in their opinion, the status of poetical phraseology; they are not meant to bring out the meaning of the text in question. … At that time this method was generally known and used by everybody, just as the poets use poetical expressions.[43]

The context of Maimonides' remarks is his discussion of the homilies in *Leviticus Rabbah* concerning the Four Species used in the Sukkot festival.[44] Maimonides distinguishes between two approaches to these derashot:

> [One] class … imagines that [the Sages] have said these things in order to explain the meaning of the text in question, and [the other] class … holds [the midrashim] in slight esteem and holds them up to ridicule, since it is clear and manifest that this is not the meaning of the [Biblical] text in question. … Neither of the two groups understands that [the midrashim] have the character of poetical conceits.

It is nevertheless clear that Maimonides points to this technique as a way of repudiating anthropomorphism.

5. Experience of Encounter

In his article "Anthropomorphism," written for the *Jewish Encyclopedia*, Louis Ginzberg surveys the "aversion to anthropomorphism" that in his view has characterized Jewish thought since the Bible. In a passage touching on our subject, he writes: "In the older rabbinic literature there also occur a number of utterances which show a tendency to suppress low and sensuous conceptions

[41] See, e.g., *Mekhilta de-Rabbi Ishmael*, *be-Hodesh*, 210–211; *Sifre Deuteronomy* 355; ibid., 357; *Sifra* 2:18; *Midrash Tehillim* 22:32 (99a); and see Fishbane, "Measures of Glory," 33, 44.

[42] This subject is discussed in Chapter 9, this book. Heinemann's claim that the Targumim rejected anthropomorphisms is discussed in this chapter in Section 11.

[43] *Guide*, 3:43, 573; see Heschel, *Theology*, I:39; and Saperstein, *Decoding*, 14. It is interesting to compare these comments with the Maimonides' observations in his *Introduction to Perek Helek* (*Maimonides' commentary on the Mishnah*, Sanhedrin, 121).

[44] *Lev Rabbah* 30, p. 683 ff.

of divinity."[45] The evidence adduced for his claim is sketchy, and his argument rests primarily on a passage in *Genesis Rabbah* 27.1 ("The prophets show great daring in likening the Creator to the form" or "Great is the power of prophets, who compare the form to its Creator"), which he interprets as a rejection of anthropomorphism. He sees this statement as paradigmatic for all midrashim, including the anthropomorphic midrashim in rabbinic literature. This midrash and its role in the anthropomorphism debate is analyzed in depth in Section VIII.

Ginzberg's statements were harshly criticized by Franz Rosenzweig, who attacked the former's psychological approach, according to which anthropomorphism is the product of the "inadequacy of language" and "limitation of thought," as a result of which "'God' [is] formed by man in his own image." Rosenzweig argues that this approach ignores the "theological experience" that is the object of research in "the scientific study of religion" and by whose means the issue of anthropomorphism should be understood.[46]

Rosenzweig is not known as a scholar of rabbinic literature, and his article oscillates between the expression of his views on the phenomenology of anthropomorphism and a scholarly and detached evaluation of the conception of divinity in classical Jewish sources. His words seem to have been influential, however, among scholars, and hence deserve a careful examination. In Rosenzweig's opinion:

> Theological experiences, as long as they are genuine experiences and not phantoms, have just this in common: they are experiences of meetings, not experiences of an objective kind like experiences of the world, nor a mixture of both, like experiences between human beings. Therefore, to remain here within the precinct of experience one does not want to assert something either about God or about man, but only about an event between the two. And the Bible offers the best guide precisely to this. . . .
>
> The "anthropomorphisms" of the Bible are throughout assertions about meetings between God and man.
>
> . . . The biblical "anthropomorphisms" . . . never unite, then, one with the other as image or portrait, but rather, in accordance with their solely concrete and present character, relate to each other throughout always only in the creaturely face-to-face, and only in this momentary moment.[47]

Rosenzweig's existentialist conclusion should not obscure its rationalist-metaphysical, Maimonidean background. The outlook described earlier is derived, in Rosenzweig's view, in part from the recognition that "one may not say that He has eyes, ears, mouth, hand, leg, nose; but not because seeing, hearing, speaking, touching, descending, smelling would be a degrading restriction for

[45] Ginzberg, "Anthropomorphism," 623. Though written in 1901, this entry continues to wield influence today. See, e.g., Stern, "Anthropomorphim," n.1. Regarding Ginzberg's method of researching aggadah, see Frankel, *Ways of Aggadah*, 553.

[46] Rosenzweig, *Naharaim*, 34–40. Rosenzweig's article was first published in 1928 in *Der Morgen* and thereafter in 1937, in *Kleiner-Schriften*, Berlin, 521; see Galli, "Rosenzweig," n. 1.

[47] Rosenzweig, *Naharaim*, 35–39.

Him, but rather because the 'having' would be." He continues: "We have no knowledge of what God is or what God has."[48] This is a negative theology, which denies the possibility of describing God's actual qualities in positive terms; Rosenzweig attributes it to the Hebrew Bible, whose anthropomorphisms he regards as "the protective armor of monotheism."[49] He expresses himself in similar fashion about aggadah:

> Judaism saved itself from both extremes of the Hellenistic Jewish spirit of God and of the Jewish-Christian God-man in the bold "anthropomorphisms" of the Talmudic aggadah; namely, through the certainty, firm as a rock, that everything we experience of God comes from Him Himself. We are indebted to this certainty, next to the Law and the Prophets, for our continued existence as Jews.[50]

In Rosenzweig's perception, there is a basic form of negative theology that underlies the Bible as well as the midrashic and aggadic literature. The anthropomorphic expressions in these sources refer, not to God, but to man's momentary experience of encounter with God, an experience that Rosenzweig considers vital for religious life of any kind.[51] Aggadah's focus on religious experience rather than on God liberates it from the shackles of monotheism – which represses any attempt to speak about God Himself – and enables it to indulge in bold descriptions of divine form. The sole limitation that Rosenzweig ascribes to aggadah is the avoidance of any amalgamation of descriptions that would result in a complete "image or portrait" of God. This "limitation" is the only literary-textual justification he gives for his view of the existential nature of anthropomorphic descriptions in the classical Jewish tradition in general, and in rabbinic literature in particular.[52]

Rosenzweig's views on the importance of anthropomorphic expressions (for a believing person in our time as well) may provide a response to the heartfelt concerns of many; however, predicating it on rabbinic belief and doctrine poses a number of difficulties. To begin with, Rosenzweig's justification for imputing these views to Biblical and aggadic literature is questionable. Contrary to his view, it is widely believed that the Bible and midrash present an accurate portrait (psychologically, at least) of God. Furthermore, as noted earlier, the fact that the sources avoid descriptions of God in human, physical terms does not necessarily originate in a conception of Deity premised on "negative theology"; it may

[48] Ibid., 37.

[49] On Rosenzweig's metaphysical concept of God, see Rosenzweig, *Star*, 15–19, 23–33, and see Galli, "Rosenzweig," 242; Amir, "Philosophy of Rosenzweig"; compare with Idel, "Rosenzweig and the Kabbalah," 169.

[50] Rosenzweig, *Naharaim*, 39.

[51] On the question of how the myth is transformed into the word of God calling to man "at this moment," see Rosenzweig's article, "The Bible and Luther," *Naharaim*, 41–55, and see Amir, "The Philosophy of Rosenzweig," 391–392.

[52] Rosenzweig uses this justification for the use of anthropomorphisms in the Bible, but presumably also applies it to the aggadah, for in his view they both express the same experience.

rather reflect the presumption that the Deity is hidden from human sight. In fact, this is usually the covert rationale of the Torah, and occasionally of the midrash, for avoiding descriptions of God – a rationale that is certainly consistent with Rosenzweig's existentialist approach. Third, even if Rosenzweig's "limitation" is correct with respect to the Bible, it does not comport with the "bold anthropomorphisms of Talmudic aggadah," which do not (even in Rosenzweig's view, it would seem) recoil from physical descriptions of God, and certainly not from complex psychological descriptions of God.[53] Regarding the alleged absence of a complete "description" or "portrait" of God: if Rosenzweig refers to the absence of comprehensive and systematic texts or treatises, their absence in aggadic literature is not limited to discursions about God, but characterizes the aggadic approach to all other subjects as well. As a literary form – though not necessarily in its substantive-ideational essence – the aggadah is invariably highly fragmented and narrowly focused.

I have elaborated on Rosenzweig's ideas because of the influence of his views on scholars of the Bible and rabbinic literature.[54] While the latter do not explicitly acknowledge his influence, a few comparisons will suffice to demonstrate it. Moreover, Rozenweig's remarks are important because they provide a lucid, well-developed expression of ideas often referred to only obliquely by scholars writing after him.

Max Kadushin, who coined the phrase "normal mysticism" to describe the rabbinic venture, contends that their religious outlook lacks any trace of a palpable, sensory perception of God.[55] At the same time, he repeatedly stresses that the Rabbis and the philosophers lived in different conceptual worlds, participating in radically different discourses. While the latter deliberate the question of how to assess anthropomorphic expressions in the Bible, the Rabbis treated those expressions not as propositions but as "value-concepts." Kadushin writes:

> The very problem of anthropomorphism did not exist for [the Rabbis]. Value-concepts like God's love and His justice are basically anthropomorphic or anthropopathic even as abstract concepts; but their character as value concepts make them necessary elements in the organic complex. On the other hand, it is wrong to say that the Rabbis affirmed, in principle, the corporeality of God. Such a principle would hardly be compatible with what we recognized to be the normal religious experience of the Rabbis, since that form of mystical experience, normal mysticism, is devoid of sensory experience of God.[56]

The anthropomorphic formulations that characterize the aggadah are, in Kadushin's view, primarily "metaphoric expressions" – that is, "metaphoric

[53] See Stern, "Anthropomorphism."

[54] See, e.g., Knohl, *Sanctuary of Silence*, 124 which refers (ibid., n. 12) to Kaufmann, *History*, 1: 440–442. On Rosenzweig's influence on scholars of Jewish philosophy, see, e.g., Rosenberg, "Myth," 176–178; and see Liebes' response, "Myth and Orthodoxy."

[55] On the term "normal mysticism" see Kadushin, *Rabbinic Mind*, 11.

[56] Ibid., 280.

expositions of a sense of having a particular relationship. This sense, which is personal and experiential . . . may only be expressed by way of metaphor."[57] The similarity of Kadushin's ideas to those of Rosenzweig is obvious.[58]

Ephraim E. Urbach, in his classic work, *The Sages: Their Concepts and Their Beliefs*, barely touches upon the issue of anthropomorphism. He thinks it self-evident that the Rabbis, following the Bible's lead, rejected any concept of God having a physical nature. In one of his few references to the topic, Urbach writes:

From the Bible the Sages acquired their supra-mythological and supra-natural conception of the Deity. He is spirit and not flesh. All possibility of representing God by means of any creature upon earth or the hosts of heaven is completely negated. "To whom then will ye liken God? Or what likeness will ye compare unto Him?" (Isaiah 40:18). The war against the images was a war against the corporealization of the Godhead, against the belief that there is something divine in matter and its natural or magical-artistic forms. On the other hand, the idea of abstraction is wanting in the Bible. God appears and reveals Himself to human vision in various likenesses . . . . These literary images and other anthropomorphic expressions were able to convey the consciousness of God's nearness, but at the same time they could open the door to the infiltration of myth . . . . The banishment of magic and myth demanded the creation of a gulf between God and man, but nevertheless the believer wishes to feel God's proximity . . . .[59]

Urbach too believes that the Biblical God, as well as the rabbinic one, is absolutely transcendent. He interprets anthropomorphisms in rabbinic literature as expressing a sense of "nearness to God," categorically rejecting their being a description of God Himself. As we observed, the source of this idea is Rosenzweig, from whom Urbach received it, either directly or through Gershom Scholem.[60] It was to these statements and their ilk – uncritically accepted by other scholars[61] – that Yaakov Sussman referred when he wrote, "To a certain extent, Urbach also depicted the world of the Sages and Rabbinic-Talmudic Judaism in rather idyllic colors. He occasionally described them in his own image . . . under a cloak of rationalism."[62]

57 According to Holtz, *Rabbinic Thought*, 220. See Holtz's wider exposition of Kadushin's "normal mysticism," 208–226, and Kadushin, *Rabbinic Mind*, 273–288. On p. 12, Kadushin writes "What has been regarded as the problem of anthropomorphism in rabbinic literature is indeed a problem, but not of anthropomorphism. It is a problem that arises, as we shall notice, out of the rabbinic experience of God, a problem that demands a psychological, not a philosophical, approach." And on p. 180: "Rabbinic statements about God arise as a result of interests entirely different from those of philosophic thought, represent human experiences that have nothing to do with speculative ideas." Kadushin's view is also clarified by his critique of Yehezkel Kaufmann's position, described above (see *Rabbinic Mind*, 283–287).

58 Another strategy adopted by Kadushin for the repudiation of anthropomorphism was the ascription of indeterminacy of belief to the Rabbis. See, e.g., Kadushin, *Rabbinic Mind*, 11.

59 Urbach, *The Sages*, I. 37–38. These remarks bear the clear imprint of Kaufmann, see ibid., n. 3.

60 To whom he refers, ibid., 38, n. 5.

61 Elior, "The Concept of God" 16; Frankel, *Ways of Aggadah*, 376; See also Section VII, this chapter.

62 Sussman, "Urbach," 77, n. 151; and see also ibid., 73, n. 148.

Unlike most scholars, Rosenzweig, Kadushin, and Scholem do not disparage anthropomorphism, and even ascribe to it certain redeeming qualities. Nevertheless, on a substantive level, their rejection of anthropomorphism was no less principled than its rejection by those scholars who were unprepared to concede any mitigating value to anthropomorphisms.

6. Attributes of Action

As mentioned earlier, Urbach followed the lead of Gershom Scholem. Scholem himself cites with approval the comments of Benno Jacob, who states that

> there is no doubt that, throughout the Bible ... God is a purely spiritual being without body or form ... Thus, one can say that the more spiritual the concept, the more anthropomorphic the expression, as these figures were concerned, not with philosophical precision, but with speaking about a living God.[63]

In contrast to Jacob's desire to "also repudiate any discussion on the form of God," Scholem suggests "another trend that faithfully adheres to anthropomorphic discourse about God":

> The Jewish aggadah is the living and most expressive example of this mode of discourse, in which the sense of intimacy with the Divine is still sufficiently powerful for its authors not to be taken literally. The metaphorical character of such utterances, which generally refer to God's activity rather than to His appearance, is in nearly all cases quite transparent, and is often underscored by the very biblical passages quoted by way of support.[64]

Scholem suggests a blend of three explanations for the aggadah's "faithfulness" to anthropomorphic expressions, a phenomenon that appears paradoxical given his assumption of the spirituality of the Talmudic God. The explanations are closely related, but the distinctions are important. The first explanation, apparently taken from Rosenzweig ("a mode of discourse [displaying] the sense of intimacy with the Divine"), was discussed earlier.[65] The second – that expressions of anthropomorphism are metaphors and metonymies – will be discussed later.[66] The third explanation is that anthropomorphic imagery in aggadah refers only to God's actions and not to God's appearance, and certainly not to God's essence.

[63] Scholem, *On the Mystical Shape of the Godhead*, 18; for a similar position, see Kadushin, *Rabbinic Mind*, 141.

[64] Scholem, *On the Mystical Shape of the Godhead*, 19.

[65] Ibid., 19. Immediately following the cited passages, Scholem continues his discussion of aggadah in another vein entirely: "But we are not concerned here with the aggadic worldview *per se*. What really concerns us is the following issue: in light of the hostility of the rabbinic theology to myths and to imagistic discourse on God, as well as the tendency in Jewish liturgy to limit anthropomorphic descriptions of God, why was the problem of God's form not eliminated altogether [from Kabbalah]?"

[66] However, cf. Scholem, *Jewish Gnosticism*, 36 ff; Idel, "Rabbinism vs. Kabbalism," and Fishbane, "Gershom Scholem."

This explanation, which was adopted by Urbach[67] as well, is clearly grounded in the Maimonidean doctrine of attributes of action, whereby "Every attribute that is found in the books of the deity, may He be exalted, is therefore an attribute of His action and not an attribute of His essence."[68] Writing on Exodus 34:6–7, a passage known in Rabbinic Judaism as "the Thirteen Attributes of God," Maimonides states: "The Sages call them attributes [Hebrew, *middot*]. ... The meaning here is not that He possesses moral qualities, but that He performs actions resembling the actions that in us proceed from moral qualities – I mean from attributes of the soul; the meaning is not that He, may He be exalted, possesses attributes of the soul."[69] Scholem cites no source to support this Maimonidean reading of the Rabbis' anthropomorphic statements. Possibly, he relies upon the midrash in *Exodus Rabbah* cited by Urbach:

The Holy One, blessed be He, said to Moses: "What do you seek to know? *I am called according to My acts*. Sometimes I am called *El Shadday* [Almighty God'], or *Tseva'ot* ['Hosts'], or *Elohim* ['God'], or *YHWH* ['LORD']. When I judge mankind I am called *Elohim* ... when I suspend man's sins I am called *El Shadday*; ... This is the meaning of the phrase *ehyeh asher ehyeh* ['I am that I am'] – I am named according to my acts."[70]

Here, too, the solution to the "problem" of anthropomorphism is of a sweeping character. Like Urbach, who regards this late midrash as "a summary, as it were, of the appellations given by the Sages to the Divine Names,"[71] Scholem also applies this concept indiscriminately to the aggadah in its entirety, without supporting argumentation, and despite the contradictory implications of other sources. And the fact is that there are numerous sources which only tenuously lend themselves to being interpreted solely as expressions of God's actions. Moreover, unless one decides to read into this source Maimonides' conception of descriptions of divine actions, a conception not found there, the aforementioned source, while avoiding a physical portrayal of God, is not necessarily antianthropomorphic. It can easily be interpreted in a manner consistent with anthropomorphism, and its exhortation to recognize God by consideration of His actions does not necessarily predicate a formless God. Just as a person's actions attest to his character, without which it would remain anonymous and

[67] Urbach begins the chapter "The Shekhina – The Presence of God in the World" with a similar claim, see *The Sages*, 37.

[68] *Guide*, 1.53.

[69] Ibid., 1.54.

[70] *Exodus Rabbah* 3.6 (All translations of *Midrash Rabbah* are based on Soncino edition of *Midrash Rabbah*, ed. H. Freedman, 1939, translation of *Exodus Rabbah* – S. M. Lehrman), 64; and see Urbach, *The Sages*, I.37.

[71] Urbach adds, "This interpretation of the Names [...] implicitly nullifies all mythological exegesis," and continues with arguments cited above (Section V) regarding the Rabbis' belief in a God who is supernatural, formless, et cetera. Urbach thus interprets this midrash as containing the concept that God is transcendent and that all what can be known about God is God's actions, which reveal nothing about God Himself. In other words, he reads into this midrash Maimonides' theory of attributes of action.

hidden, so too God's actions attest to His essence, which is similarly veiled.[72] In contrast to Maimonidean metaphysics, this midrash does not necessarily distinguish between God and his actions. In other words, it is both plausible and reasonable to interpret this midrash as dealing not with God's abstract essence, but rather with the fact of his being hidden from view, recondite, and exalted. Confronted with God's ultimate inscrutability and sublimity the aggadist seeks a modicum of Divine apprehension by contemplation of His actions.[73]

7. Anthropopathism

Alexander Altmann published a study devoted to the subject of "*Homo Imago Dei* in Jewish and Christian Theology," in which he surveys the exegetical history of the Biblical idea. On the Rabbis' reading of this issue, Altmann states:

> Despite the facility with which the Rabbis used anthropopathic imagery in haggadic homilies, their theological stance was one of opposition to any sort of anthropomorphism. Their reaction to prophetic passages, such as Ezekiel 1:26 and Daniel 8:16, is summed up in the statement: "Great is the power of prophets, who compare the form to its Creator!" [*Genesis Rabbah* 27.1][74]

Altmann restricts the Rabbis' anthropomorphic expressions to "anthropopathic imagery." "Anthropopathism" is a conception that limits the scope of anthropomorphism to the ascription to God of psychological or mental features. God is understood as possessing personality – loving, hating, desiring, being angry, and so on – but not as being (or having) a body or any physical form. The term is used to characterize moderately anthropomorphic conceptions, which are in essence antianthropomorphic, because a divinity that is a personality without a body is not, in fact, physical in the precise meaning of the term.[75] In general, one could say that anthropomorphism includes anthropopathism, but not the reverse.

Altmann provides no textual basis for his generalization regarding the sources. Admittedly, both midrash and aggadah abound with attributions of mental and psychological traits to God, but they are also replete with ascriptions of physical in the following chapters.

8. *Genesis Rabbah* 27.1: "Great is the Power of Prophets, Who Compare the Form to its Creator"

Support for Altmann's claim that the Rabbis opposed "any form of anthropomorphism" is often adduced from the above passage in *Genesis Rabbah* 27.1.

[72] Cf. Heschel, *Theology*, I:4.

[73] According to most manuscripts of *Exodus Rabbah* (see ed. Shinan, 127, n. 73 there), this midrash is not addressing the question of abstraction or anthropomorphism but, rather, is explaining the multiplicity of names for God.

[74] Altmann, "Imago Dei," 239–240.

[75] This approach is favored to an extent by Stern, "Anthropomorphism," 157.

The reader will have observed that this passage is cited as a conclusive proof text for the Talmudic repudiation of anthropomorphism.[76] Yet this passage raises two difficulties. First, even if we understand this passage as representing a rejection of anthropomorphism, what justification is there for assuming it to be emblematic for all rabbinic literature? Second, the passage itself need not necessarily be understood as a principled rejection of anthropomorphism. The text reads as follows:

R. Yudan said: Great is the power of the prophets, who liken the form to its Creator, as it is written, "And I heard the voice of a man between the banks of the Ulai" etc. [Daniel 8:16, where it is made clear that the voice was that of God]. R. Yudan b. R. Simon said: We have other verses which display this more clearly than this one, [e.g.]: "Above the expanse that was over their heads was the figure of a throne with the appearance of sapphire-stone; and above, on the figure of a throne was a figure with the appearance of a human being." (Ezek 1:26)[77]

Prior to addressing this passage itself, let us return to Maimonides. Maimonides also cited this passage as evidence of the rabbinic rejection of anthropomorphism. In *Guide* he writes:

The Sages, may their memory be blessed, have made a comprehensive dictum rejecting everything that is suggestive to the estimative faculty by any of the corporeal attributive qualifications mentioned by the prophets. This dictum will indicate to you that the doctrine of the corporeality of God never occurred to the Sages, may their memory be blessed, and that this was not according to them a matter lending itself to imagination or to confusion. For this reason you will find that in the whole of the Talmud and in all the Midrashim they keep to the external sense of the dicta of the prophets. This is so because of their knowledge that this matter is safe from confusion and that with regard to it no error is to be feared in any respect; all the dicta have to be considered as parables [. . .] The comprehensive dictum to which we have alluded is their dictum in *Genesis Rabbah*, which reads: "Great is the power of the prophets; for they liken the form to its creator. For it is said: 'And upon the likeness of the throne was a likeness as the appearance of a man.'" They have thus made clear and manifest that all the forms apprehended by all the prophets in the vision of prophecy are created forms of which God is the creator. And this is correct, for every imagined form is created.[78]

[76] See Louis Ginzberg's entry on "Anthropomorphism" in the *Jewish Encyclopedia* (see Section V, above), and our discussion of Eliot Wolfson's treatment of the issue in Lorberbaum, Zelem, 64–66, and also, by way of example, Komolosh, *The Bible in the Light of Translations*, 104, n. 9, and the bibliography cited there.

[77] *Genesis Rabbah*, ed. Theodor-Albeck, 255–256, and see the different versions and many parallels there. The present translation borrows from *Genesis Rabbah*, trans. H. Freedman [*Midrash Rabbah*, vol. 1] (London: Soncino Press, 1939), 220.

[78] *Guide*, 1.46, (102–103). Maimonides' interpretation of *Genesis Rabbah* 21:7 may serve as a conclusion to our discussion of this chapter. He explains that, "For the purpose of the present chapter is solely to make clear the meaning of the bodily organs ascribed to God, may He be exalted over every deficiency, and to explain that all of them are mentioned with a view to indicating the actions proper to those organs, which actions – according to us – constitute a

Maimonides regards the passage in *Genesis Rabbah* as a "comprehensive dictum" (Arabic *qula jamʿa*), which relates not only to the category of "corporeal attributive qualifications mentioned by the prophets," but which also determines the interpretation of "the entire Talmud and all the midrashim." Maimonides saddles the midrashic passage with an exceedingly heavy burden. Apart from serving as a quasi-principle, proving that the rabbis absolutely rejected anthropomorphism, it also explains why "you will find that in the whole of the Talmud and in all the midrashim they keep to the external sense of the dicta of the prophets." Maimonides therefore regards the passage as antianthropomorphic and as demonstrating that "this was not, according to them [i.e., the Sages] a matter lending itself to imagination or to confusion [the eschewal of anthropomorphism]." In fact, it may be taken much further: the rabbinic dictum explains why there is actually *no danger* involved in the use of anthropomorphisms, as "ascribing physicality [to God] never occurred to them"[79] – a statement descriptive of all people and not just of the rabbinic Sages.

How does all this follow from the statement in *Genesis Rabbah*? Maimonides explains that, in the Rabbis' view, "the prophets liken the form (*tzurah*) to its Creator" in "the vision of prophecy" alone. He identifies the Hebrew term *tzurah* in *Genesis Rabbah* with the Arabic term *sura*, which denotes the form produced by the imagination, appearing in the prophet's consciousness as a prophetic vision.[80] For Maimonides, the term in *Genesis Rabbah* does not refer to an actual, concrete object, a person (or a manifestation of that person, a kind of Created Glory) whom the prophet compares to God in the framework of his vision. Rather, it refers to an entity existing exclusively within the prophet's imagination. The imagined (human) form is created within the prophet's mind by God, and the prophet perceives this image as resembling the Creator, that is, the One who creates it in his mind. While the prophets in their minds compare the imagined forms to the Creator, they are well aware that these forms are purely subjective, not indicative of anything outside their own minds, and certainly not of God.[81] This duality is implicit in Maimonides' statements quoted earlier and becomes unavoidable toward the end of that chapter of the *Guide*:

> Understand this thoroughly. They have thus made clear and manifest, as far as they themselves are concerned, that they were innocent of the belief in the corporeality of God;

perfection. In this way we indicate that He is perfect in various manners of perfection" (*Guide*, 100).

79 See *Guide*, 102: "I perceive no one who would doubt the fact that God . . . is not a body." Thus Maimonides seems to hint to the context of the comment in *Genesis Rabbah*, where there is an interpretation – based on R. Yudan's position – that "For there is a man whose labor is with wisdom" (Eccles 2:21) refers to no other than God Himself.

80 See Harvey, "Great is the Power," 56; see also Klein-Braslavy, *Story of Creation*, 87–88.

81 According to Maimonides, the focus of R. Yudan's words is not on the analogy that the prophets determine between the form and its creator. Rather, his primary focus is on the prophetic vision, which is confined to his imagination, and to himself alone.

and furthermore, that all the shapes and figures that are seen in the vision of prophecy are created things. However, the prophets likened a form to its creator.

In other words, in Maimonides' view, the analogy between the form and the Creator is naught but the product of the prophet's imaginative faculty. This interpretation relies largely upon Maimonides' interpretation of the phrase "Great is the power" in *Genesis Rabbah*. He writes:

How admirable is their saying: "Great is the power," as though to say they, peace be on them, considered this matter great. For they always speak in this way when they express their appreciation of the greatness of something said or done, but whose appearance is shocking. Thus they say, "A certain rabbi performed the act [of *halitzah* – a rite by which a man renounces the obligation to marry his brother's widow, rendering her free to marry another] with a slipper, alone, and by night. Another rabbi said thereupon: How great is his strength to have done it alone." "How great is his strength" means "how great is his power." They say, as it were: How great was the thing that the prophets were driven to do when they indicated the essence of God, may He be exalted, by means of the created thing that He has created. Understand this thoroughly.[82]

Maimonides derives the meaning of the words "great is the power" in *Genesis Rabbah* from the Aramaic phrase "how great is his authority [*kama rav guvreh*] in *Bavli Yebamot*. The Talmud relates that Rabba b. Hiyya Catosphaah (of Ctesiphon) ruled that the *halitzah* ceremony was to be performed at night, using a felt sock, and with no other men present. His ruling contradicted the halakhah, which requires that the ceremony be carried out during the daylight hours, using a leather shoe, and in the presence of a three-judge tribunal. The Babylonian Amora Samuel, commenting in the same text on Rabba b. Hiyya's actions, says: "How great is his authority in acting [i.e., relying] on the view of an individual." Maimonides in turn draws an analogy between the boldness ascribed by Samuel to Rabba bar Hiyya and the meaning of the expression "great is the power" in *Genesis Rabbah*. Accordingly, the Sages' use of the expression "great is the power" invariably ("For this is the way they always express themselves") indicates a daring and unusual move – a move that superficially, at least, warrants rejection ("whose appearance is shocking").[83] Maimonides may be relying on Rashi's commentary on Samuel's dictum ("he spoke disapprovingly").[84] But unlike Rashi, Maimonides understands the

82 *Guide*, 1.46, 103. For a detailed analysis of this paragraph and of the entire subject, see Harvey, "Great is the Power," especially 57–60. Most of my analysis and interpretation of Maimonides is based on his article.

83 Michael Schwartz's translation (into Hebrew) is more accurate: "How admirable is their saying: 'Great is the power,' as though to say they, peace be on them, considered this matter to be severe. [According to another translation proposed by Schwartz, '[T]hey considered this matter to be a great transgression']. For they always speak in this way when they take a severe view of something said or done, but whose appearance is shocking." See Schwartz, *Guide*, 79. Compare Kapah's translation *ad loc.*

84 *b. Yeb.* 104a.

amora's statement as carrying a dual meaning: on the level of "appearance" (Arabic *taher*) it warrants reprobation, since, after all, Rabba b. Hiyya's decision violated the established law regarding *halitzah*. But it also has "a positive implication" (Arabic *baten*): the widow's release from her late husband's brother. Our case is similar. On one level, the prophet's audacity in ascribing physical form to God warrants condemnation but, on the other hand, it serves an important social objective – educating the multitude regarding God's existence. Consequently, on a deeper level it is deserving of approbation. The two levels of meaning in the use of the expression "great is the power" enable Maimonides to argue for the duality inherent in the prophets' likening of form to its Creator and to claim that the Rabbis "have thus made clear and manifest, as far as they themselves are concerned, that they were innocent of the belief in the corporeality of God."

But is this really the import of the statement in *Genesis Rabbah* 27.1? Zev Harvey has observed that this is a "strange interpretation of the midrash," reflecting "more than a modicum of tendentiousness."[85] Indeed, the usual meaning of the verb *dimmah* (or, for our purposes, *medammim)* in Rabbinic Hebrew is not "imagine" (i.e., to use the imaginative faculty of the mind) but the drawing of a connection or analogy between two objects or matters – or, as we have translated the term, to "compare" or "liken."[86] As such, the Hebrew phrase "likening the form to the Creator" does not refer to the imagined form in the mind of the prophet, but simply draws our attention to the comparison between a created form and its Creator. Moreover, it is doubtful whether Maimonides' inference from *Bavli Yebamot* regarding the midrash in *Genesis Rabbah* stands up to scrutiny. Strangely, Maimonides employs the Aramaic expression *kama rav guvreh* ("How great is his authority") in order to explain the meaning of the Hebrew phrase *gadol kohan* ("great is their power"), which is not a precise translation. In fact, the expression "*kamah rav guvreh*" frequently appears in Talmudic and midrashic literature with an entirely different connotation than that which Maimonides ascribes to it. A survey of the other occurrences of the phrase *gadol kohan* (or *gadol koho* – "great is his power") in Talmudic literature indicates that the phrase always bears an affirmative connotation. Moreover, it always denotes an ability, positive quality, or talent that is viewed as unusual, occasionally indicating great physical power.[87] An interpretation of the phrase in *Genesis Rabbah* based on its meaning in other Talmudic contexts leads to the conclusion that Rabbi Yudan was not criticizing the prophets for their audacity, even on a literal level, but rather indicating their elevated level and their remarkable abilities.

[85] Harvey, "Great Is the Power," 56 and 58, respectively.

[86] See Jastrow, *s.v. nidmeh*, 313.

[87] See, e.g., *y. Ma'aser Sheni* 8:5 [56c]; *idem*, *Bik*. 3:3 [55c]; *b. Bava Kam* 79b; *b. San.* 108a; *b. Zev* 64a; *b. Arak* 15a. In the midrashei aggadah, the term *gadol kohan* appears frequently. See, e.g., *Genesis Rabbah* 46.6 These issues are discussed by Harvey, "Great Is the Power," 57, who cites these sources.

The preceding critical remarks do not contradict the conclusion that the passage from *Genesis Rabbah* does in fact reject anthropomorphism (albeit a different conclusion is also plausible). One might endorse the general thrust of Maimonides' exegesis and claim that the midrash speaks specifically of the prophets' tendency to "liken the form to its Creator," as distinct from the notion of the prophets actually glimpsing (or imagining) the Creator himself, or at least His image. Its implication could be that in fact one cannot apprehend God. And why not? Because He is without form. Hence, all that can be done is to liken God to something or, more precisely, to liken something (i.e., a human image) to God. But this kind of "imagery" demands a power and boldness that are the exclusive forte of prophets. At the same time, the prophets know that this act of likening is without any basis in concrete reality. Why then, do we say that "great is their power"? Because they provided us with a religious language that enables us to relate to God, to speak about God, to explain God's word (i.e., the Scriptures), and thereby sense the presence of He who cannot actually be described or perceived.

Is this the only possible interpretation of that passage? Might it not support a different interpretation, one that does not reject anthropomorphism but in fact assumes or at least implies an anthropomorphic conception of God? In my view this question ought to be answered in the affirmative. R. Yudan's comments in *Genesis Rabbah* deal with the phenomenology of prophetic theophany. Its ideational background is the conception that God is hidden and exalted, but not necessarily formless and abstract. People in general may form conceptions of God in their own minds and imaginations, but without any real contact with God; prophets, on the other hand, have the exceptional ability to perceive a modicum of the divine. True, they do not perceive the Divine essence, but merely its reflection, which is the human form. Yet this reflection is not only the product of human imagination; it reflects something of the Godhead itself. This is the core of revelatory experience. R. Yudan's statement represents a salient Jewish conception, rooted in the Bible itself, which categorically rejects the possibility of directly seeing or encountering God, for all mortals and even for prophets. Prophetic experience is about a certain (albeit limited) actualization of the divinity. This actualization is the special and exclusive faculty of the prophets, an experience inaccessible to other men. When R. Yudan b. R. Simon responds that there is another, even clearer verse "and above the firmament there was the likeness of a throne ... and seated upon the likeness of a human form" (Ezek 1:26), his argument is that the image in Ezekiel attests to an even more categorical actualization of God, since it connotes the visual contemplation of God's image, whereas the verse in Daniel ("I hear a human voice ... ": Dan 8:16) is limited to the aural encounter, representing an indirect encounter of the Divine. Aural actualization has a certain obscurity when compared with visual actualization.

The phrase "liken the form to its Creator" does not necessarily express the conception that, in the absence of any common ground which might facilitate

such a comparison, the comparison of the human with the divine is illusory. It states rather that the prophets are able to convey, albeit indirectly, a certain limited dimension of God.[88] The passage in *Genesis Rabbah* thus strikes a balance between the quasi-objective nature of the prophetic encounter with God and God's exalted and recondite essence. Yehezkel Kaufmann noted this, observing, "When they said, 'Great is the power of prophets, who liken the form to its Creator,' they were referring not to the likeness [of God] in and of itself, but to the limitations of any attempt to compare God to man . . . In this midrash and all those of the same genre, which reject 'corporeality' . . . there is exaltation [of God] but no abstraction."[89] According to this reading, not only does this passage from *Genesis Rabbah* not reject anthropomorphism, but it implies that the Rabbis ascribed to the prophets the concept that God has an image akin to that of a human being, an outlook they themselves shared.[90]

9. Allegory

Many of the scholars whose work we have discussed thus far employ the category of allegory as a tool for explaining anthropomorphic expressions in the aggadah.[91] They generally ascribe to the Hebrew term *mashal* the meaning it was given in the Middle Ages, first by Saadya Gaon and later by Maimonides. The term serves Maimonides as a central exegetical tool in his interpretation of Bible and midrash, particularly regarding their use of anthropomorphic terms.[92] He uses the term (in Arabic, *mithl*) when referring to any text with two levels of meaning – an exoteric level (*thahir*) and an esoteric or internal level (*batin*) or, in modern parlance: allegory, metaphor, or symbol. The term also encompasses more extensive linguistic usages – for example, complex descriptions or elaborate narratives – provided that they have an additional level of meaning beyond the overt and obvious.

Characterizing a particular text as an allegory is not limited to the statement that it has two levels of meaning. The two meanings must also be connected, in as much as the overt and obvious meaning alludes to an esoteric level, which is its covert, hidden meaning. The exoteric meaning has no independent status; in the

[88] See Kahana, "Critical Edition," 513, n. 119, who cites a plethora of dicta of R. Yehuda ben Simon, among them the homily in *Genesis Rabbah* 27.1, which postulate the similitude of God and man (especially Adam). In his view these dicta amalgamate into a comprehensive theory.

[89] Kaufmann, *History*, II.236, n. 20; see also Marmorstein, *Studies*, 107.

[90] See Wolfson, *Speculum*, 36.

[91] See *supra* Heinemann, Scholem, Urbach, Altmann, Kadushin, Frankel. See also Boyarin, "Two Introductions."

[92] Maimonides' discussion of allegories permeate all his writings, among them: Maimonides' *Introduction to Chapter Helek* (Commentary to the Mishnah: Sanhedrin 10); *Hilkhot Yesodei ha-Torah* 2.4; and see especially: *Guide*, Introduction, which is primarily devoted to this subject. For an example of the utilization of Maimonides' theory of allegory for aggadic exegesis, see Boyarin, "Two Introductions."

words of Maimonides: "The parable in itself [the level of its literal meaning] is worth nothing, but by means of it you can understand the words of the Torah."[93] The plain sense (*peshat*) of an allegory should not be confused with its literal meaning. The meaning of an allegorical text, its inner significance, is its deeper dimension – the metaphorical or allegorical meaning or the message imparted by the parable. The allegorical statement's literal meaning (its exoteric sense) thus differs from its "simple" meaning (i.e., its metaphoric or parabolic sense). The converse is true of a non-allegorical text, for which an allegorical interpretation would differ from the literal interpretation, and it is the latter that represents its "real" meaning.

As noted, many scholars link the classification of anthropomorphisms in the aggadah as allegories to the general rejection of anthropomorphism. They regard the anthropomorphic expressions as metaphors for the experience of encounter with God, the descriptions of His actions, for negative attributes, and for unfathomable mystical ideas. The recourse to these methods enabled the aggadic authors to avoid ascribing inappropriate characteristics to God.

Needless to say, it would be mistaken to deny the existence of metaphors, symbols, and allegories in midrashic and Talmudic literature.[94] Clearly, the Talmudic and midrashic corpus is replete with texts that have more than one level of meaning. Now texts of this nature confront the reader with two interrelated kinds of difficulties. First, there is the problem of identification: how does one determine whether a certain source is indeed allegorical, that is, that it has an additional, hidden dimension, and thus should not be read and understood literally? Second, even assuming that a particular text is allegorical, how does one determine the specific meaning of the allegory?[95]

These questions are complex and cannot be answered here. I raise them simply to point out that scholars are frequently insufficiently critical when resorting to the various categories of *mashal* in addressing the question of anthropomorphism in midrashic literature. The determination that a certain text is an allegory requires, in addition, a positive identification of its hidden, allegorical meaning, a stage often overlooked by scholars. Some of them contend that anthropomorphic formulations referring to God in a given midrash

[93] *Guide*, Introduction to (10, 11), where Maimonides explains the rabbinic conception of allegory in *Shir Ha-Shirim* 1.1. See also his comments (*ad loc.*) regarding his own conception of allegory. On Maimonides' conception of allegory, see Lorberbaum, "On the Conception of Parables."

[94] A distinction should be made between allegory in the broad sense indicated above, and allegory in the sense of a "short, fictional plot." The latter is a particular and special manifestation of the first. See Frankel, *Ways of Aggadah*, 323 ff. and Stern, *Parables in Midrash*. The word *mashal* will hereinafter be used in the first, broad sense.

[95] The distinction between these two questions may be contrived, because occasionally the answer to both of them is identical. But the affinity between them is not always so close. At all events from an analytic perspective, and especially for purposes of the discussion of *meshalim* and anthropomorphisms, the distinction between them is salient.

constitute sufficient grounds for determining that the particular midrash is an allegory (i.e., of the quasi-philosophical genre).[96] For others this position is either implied or derived from assumptions – theological or philosophical – which are neither rooted in the sources themselves nor justified on the basis of any other foundations. Personally, I am skeptical regarding the possibility of substantiating any general rules for a distinction between allegorical and non-allegorical texts. Such distinctions should be based upon a combination of general considerations, on the one hand, with an examination of the unique features of each passage, its language and its imagery, and the relations of all these to other images and linguistic usages, on the other.

Regarding the second difficulty: even after classifying a given midrash as "allegorical" it is still necessary to identify the additional layer of meaning. Many researchers assume, explicitly or implicitly, that midrashic use of "sensory language" in reference to God (the exoteric strata) is indicative of an esoteric dimension. The esoteric dimension is concerned with abstract ideas, usually of a philosophical nature. Such is Maimonides' approach, which identifies the inner meaning of the allegories with the principles of Aristotelian and neo-Platonic physics and metaphysics.[97] However, must one necessarily assume that the esoteric dimension of the allegories is abstract and not attainable to the senses? The Bible abounds with images and allegorical expressions that are not intended to impart information on abstract matters. For example, the description of the beloved and of her lover in the Song of Songs (5:10–16, 7:2–10, respectively) is decidedly metaphorical even while depicting actual physical beauty. To interpret these verses in allegorical or mystical terms is to read them as a "double allegory," a sort of two-tiered allegory constructed on top of the basic text, which is itself an allegory.

The use of allegories is an appropriate means for depicting human beings, with all their physical and mental characteristics, especially if these are concealed, and their precise configuration is mystifying and stimulating. One may speak of God allegorically and simultaneously conceive of Him in anthropomorphic terms. In fact, the allegorical terminology is a natural correlate of the anthropomorphic conception.[98] Accordingly, nothing compels the assumption that the midrashic "second tier," which expounds the verses in Song of Songs, necessarily has an abstract meaning. Furthermore, the "hidden" dimension of certain allegorical statements may bear a different sort of meaning, for example, a mythic one, which its authors chose to express via *allegory* rather than explicitly. Conceivably, the theosophical-mythical nature of the ideas specifically facilitates (or dictates) their presentation by way of allegory. In fact, this

[96] See Frankel, *Ways of Aggadah*, 370.
[97] Klein-Braslavy, *Story of Creation*, 39; Saperstein, *Decoding the Rabbis*, 15, nn. 61–62.
[98] See Cherbonnier, "The Logic," 196–197.

phenomenon is firmly rooted both in the Jewish tradition in general, and in rabbinic literature in particular.[99]

10. Anthropomorphisms and the Aramaic Targums

Many scholars of earlier generations who believed that the Rabbis rejected anthropomorphism invoked the Aramaic translations of the Bible, especially that of Onkelos. Following the lead of Maimonides (once again),[100] they understood these translations as evincing a sweeping tendency to eliminate anthropomorphic expressions from the Bible.[101] Michael L. Klein has proven that this impression is mistaken and that this genre of translation was motivated by a variety of other considerations. Klein further demonstrated that, alongside terms and expressions (in Aramaic translations) that appear to be antianthropomorphic, there are numerous anthropomorphic usages too. His conclusion is that Targum Onkelos (and other translations) is neither consistent nor consequential in its denial of anthropomorphism in the Bible, and therefore one cannot claim that this is one of its salient traits.[102] Klein summarizes:

> The problem of anthropomorphism was not sufficiently important in the eyes of the Jewish sages for it to be entirely eradicated from the Targum literature, or from midrashic literature as a whole. In addition, there was no uniform approach to the problem. On the contrary, there were different schools of thought, whose methods for dealing with anthropomorphism and anthropopathism differed from one another.[103]

Yehezkel Kaufmann, who anticipated Klein in many of his conclusions regarding the attitude of the Targums to anthropomorphic expressions in the Bible, goes even further. In his view, the Targums do not contain any rejection of anthropomorphism at all: "They use the expressions 'before God's glory' in order to disassociate God from imagery which is diminishing or demeaning when predicated of Him; but they see no defect in the basic form-endowing images. . . . The source of the discrepancies is their striving for exaltation, not for abstraction."[104]

[99] See, e.g., Fishbane, "Measures of Glory," 72–74; Idel, *Kabbalah*, 32–33; and compare with Urbach, "Traditions."

[100] See, e.g., *Guide*, 1.27, 28 (57–59). It should be stressed that Rav Saadyah Gaon preceded Maimonides in stressing this point. See his *Beliefs and Opinions*, 11. 98; Klein, *Anthropomorphisms*, 23–27; For a critique of Maimonides' approach, see Nahmanides, *on the Torah*, Gen 46:4 (ed. Chavel, 246–252).

[101] See, e.g., Geiger, *Bible*, 332 ff; Rosenzweig, *Naharaim*, 35; Ginzberg, "Anthropomorphism," 623–624; Urbach, *The Sages*, 41, 44, 154; Heinemann, *Ways of Aggadah*, 84; Kolomosh, *Bible*, 103–119. For a complete survey of the scholars endorsing this view, see Klein, *Anthropomorphisms*, vol. 1.

[102] See Klein, ibid., 42, 61.

[103] Ibid., 42, 46.

[104] Kaufmann, *History*, II.233.

11. Other Approaches

There were other scholars whose approach to anthropomorphic expressions in rabbinic literature differed considerably from those examined so far, but their statements were generally disregarded in both Jewish and non-Jewish scholarship.[105] To the best of my knowledge, Arthur Marmorstein, whose studies I mentioned at the beginning of this chapter, was the only scholar who conducted a comprehensive and detailed study of the issue of anthropomorphism in rabbinic literature. He was tireless in his quest for relevant materials, and his contribution to our understanding of the topic is of great importance, even if deficient in conceptual analysis and even if some of his suggestions are inadequately substantiated.[106] The immense range of anthropomorphic expressions in rabbinic literature and the consistency with which they are employed led Marmorstein to suggest that they be read more literally.[107] Consequently, his conclusions regarding the rabbinic conception of God differed considerably from the conclusions that prevailed in Jewish scholarship preceding him. However, Marmorstein's studies left no impression on the scholarly world, which generally tended to ignore them. Along with reservations regarding his tendency toward an overly literal reading of the sources, scholarly criticism was directed at his proposal to distinguish between the schools of R. Akiva and of R. Ishmael. Marmorstein characterized R. Akiva's school as espousing an anthropomorphic conception of God, and R. Ishmael's school as endorsing an abstract conception of divinity and an allegorical reading of anthropomorphic passages in the Bible.[108] I am not aware of any studies that have seriously responded to the challenge posited by Marmorstein's study of a vast array of anthropomorphic expressions (published in 1927!), which defy many of the basic assumptions underlying the studies described above.[109]

Another author whose work was relegated to the sidelines of scholarship is Abraham Joshua Heschel. In his *Theology of Ancient Judaism*, he collected

[105] The distinction between Jewish and non-Jewish scholars is significant because, despite reaching similar conclusions on our question, the two groups generally differ in terms of their motives. The former have often been motivated, in the matter of anthropomorphism as in many other matters, by apologetic concerns, while the latter have often been motivated by polemical concerns. For a survey of ideological motives in the study of rabbinic literature, see Urbach, *Sages*, Chapter 1; Moore, "Christian Writers"; Sussman, "Urbach," 64, n. 10, 67 ff; Liebes, "The Jewish Myth," Section 1.

[106] Marmorstein, "Anthropomorphism," and see also Marmorstein, "The Names of God," which makes an important contribution to clarifying these issues. Despite the vast extent of the material assembled, these studies fall far short of exhausting all the relevant Talmudic and midrashic material.

[107] It should be noted that a literal interpretation of aggadah is not foreign to traditional exegesis, such as that of the students of the Gaon of Vilna. See Frankel, *Ways of Aggadah*, 531–533. To the best of my knowledge, however, they did not tend to treat anthropomorphic aggadot in this manner. This question demands further inquiry.

[108] For a critique of his writings, see Smith, "The Image of God," 478, n. 1; Heinemann, *Ways of Aggadah*, 228, nn. 58, 62; Kadushin, *Rabbinic Mind*, 278; Stern, "Anthropomorphism," 154.

[109] See Stroumsa, "Form(s) of God," 269, n. 1.

materials on a wide range of topics. Heschel classified the sources in the form of thought-constructs bearing a mythic character, even though he never employed this term explicitly. His writings evince a conception diametrically opposed to the scholarly tendency mentioned above. While some of his formulations are amorphous and lacking in "scientific style," they disclose a profound theological sensitivity. As noted, Heschel's work remained on the periphery of scholarship, which tended not to relate to them seriously, if at all.[110]

Two other scholars who diverged from the dominant trend of research in this field were Morton Smith and Yitzhak Baer.[111] Both of these scholars, each treading his own path, devoted limited research to the topic, sometimes referring to it parenthetically in the course of their treatment of other subjects. Nonetheless, the alternative they proposed was of considerable significance.

Smith examined the theological underpinnings of rabbinic sources dealing with man's creation in the image of God against the background of Hellenistic and Roman culture and the background of other passages attesting to the rabbinic conception of the Creator.[112] Smith claims that, under the influence of the surrounding pagan culture, the Rabbis revived a Biblical mythology that had previously been marginal within the Bible itself, one which contradicted the abstract conception of divinity prevalent in its time. This culture determined the contours of Rabbinic anthropomorphism in the early generations. Smith surveys the development of the notion in rabbinic sources, distinguishing between acutely anthropomorphic expressions and the more moderate ones. The most blatant anthropomorphisms, which Smith views as characteristic of the second-century sages who were exposed to pagan-occult influences, indicate a corporeal conception of God. The more moderate anthropomorphic expressions found in Talmudic literature were products of later generations and indicate an opposition to this view or at least a significantly attenuated version thereof.[113]

Yitzhak Baer did not devote a detailed discussion to the rabbinic conception of God, but in many of his studies he tended to emphasize its mythical foundations, the roots of which he found in Greece, particularly in Platonic philosophy.[114] While some of his conclusions may be regarded with skepticism,[115] his writings signified a radical departure from the views of the scholars whose works we surveyed earlier.

Despite the diminished importance they ascribed to the exegetical role of midrash, which lead them to negate its Biblical roots, these scholars adopted a

[110] See Urbach, *The Sages*, 17, n. 26; see, however, the critique of Kahana, "Critical Edition."

[111] Smith, "The Image of God"; Baer, *Israel among the Nations*, 99–113; Baer, "Sacrificial Ritual"; Baer, "Eschatology."

[112] Smith, "The Image of God"; Smith, "The Shape of God."

[113] For a conflicting conception, see Neusner, *Incarnation*.

[114] In his view, both Rabbinic law and Rabbinic lore have a mythical inclination. See (respectively) Baer, "Foundations," 10–11; Baer, "Eschatology," 5, 13 ff.

[115] For a critique of Baer's claim regarding the Greek sources of the Talmudic rabbis, see Lieberman, "How Much Greek?," 127, 128; Urbach, *Sages*, 12–13.

different methodology. In their view, midrash in general, and anthropomorphic passages in particular, should not be read as allegory, poetry, or mere figures of speech.[116] Rabbinic literature should be read in its historical context, with a greater emphasis on its literal meaning; its investigation should be conducted in accordance with the categories of the research of mythology.

This trend, once at the periphery of scholarship, has gained increasing acceptance among scholars in recent years. Based upon the immense diversity of anthropomorphisms in midrash, and primarily in reliance upon supplementary sources,[117] there is growing tendency among scholars toward the belief that the concept of God in human form is a constitutive element in the worldview of the Talmudic rabbis, or at least in certain central groups among them.[118]

Even so, the new trend in scholarship originated primarily with scholars whose interest in Talmudic literature was incidental to their studies in other related fields, such as Bible, Apocrypha, apocalyptic literature, Hellenistic literature, early Christianity, Judeo-Christian literature, Gnosticism, Hekhalot and Merkavah literature, or Kabbalah. As a result, a comprehensive, direct examination of the issue of anthropomorphism in Talmudic literature is still a *desideratum*.[119]

The central trend in the modern study of anthropomorphism in Talmudic literature may be viewed as a continuation of the rationalist trend in Jewish literature, which originated in the period of the Geonim and received its consummate expression in the writings of Maimonides. However, the influence of Maimonides and of the Maimonidean rationalist tradition on modern scholars dealing with anthropomorphisms in rabbinic literature was not always direct. Conceivably, some of the modern scholars were not even aware that they were employing exegetical techniques that had been developed and perfected by Maimonides, precisely because Maimonides exerted such an intense and pervasive

[116] See, e.g., Smith, "The Image of God," 320.

[117] These sources include *inter alia* the writings of the Church Fathers (primarily from the second to the fourth centuries CE), which attest to the Jewish conception of God as possessing human form (see Stroumsa "Forms of God"), the early Jewish mystical writings all collected in what is known as the Hekhalot and Merkabah Literature, the New Testament, Jewish-Christian sources, Gnostic sources and even parts of the Kabbalah, starting from the end of the twelfth century. Some researchers have suggested that conclusions may be drawn from this literature regarding Talmudic literature (see Idel, "Enoch is Metatron"). Regarding all of these, see the studies cited in notes above.

[118] Stroumsa, "Form(s) of God"; Liebes, "The Jewish Myth"; Idel, *Kabbalah*, 156 ff; Idel, "Rabbinism vs. Kabbalism"; Idel, "Concept of Torah"; Idel, "The Sefirot", Idel, "The World of Angels"; Idel, "Image of Man"; Fishbane, "Measures of Glory"; Fishbane, "Forms of Divine Appearance"; Mopsik, *Les grands*, Mopsik; "The Rabbinic Tradition"; Goshen-Gottstein "The Body as Image"; Halbertal, *Revolutions*, Chapter 7; Halbertal, "If it were not a Written Verse." These studies can be supplemented by Boyarin, "Midrash and Deed"; Boyarin, "Myth and Aggadah"; Bar-Ilan, "The Hand of God"; Gruenwald, "Problems of Research"; Neusner, *Incarnation*; Friedman, "Graven Images."

[119] Stroumsa, "Forms of God," 269.

influence on subsequent exegesis of the Jewish canons, particularly regarding the subject of anthropomorphism.

His influence extended to the work of such Enlightenment thinkers as Moses Mendelssohn and Hermann Cohen and, thereafter, to Franz Rosenzweig, Julius Guttmann, and others. Maimonides' influence seeped into the work of nineteenth century scholars of the *Wissenschaft des Judentums* via the former, while via the latter his influence found its way into twentieth-century Judaic Studies.[120] The frequency with which one finds antianthropomorphic Maimonidean exegetical tendencies among scholars, generation after generation, tended to obscure its origin, making it almost axiomatic, requiring no justification. It is important to recall that Maimonides invoked every possible argument or exegetical technique in his campaign to expunge anthropomorphism from the Jewish tradition. Thus, anyone joining this endeavor will almost of necessity make use of the very same tools when examining the problem posed by anthropomorphism in Talmudic literature,

The problems indicated in our survey of the state of research are not the result of the congruence between Maimonides' exegetical techniques and those utilized by modern scholars. Rather, they are the outcome of the covert and implied presence of theological and ideological assumptions in those techniques of exegesis – ideas drawn from Neo-Platonic and Aristotelian philosophy which penetrated the Jewish tradition during the tenth century.[121] As noted, these assumptions are sometimes concealed and their influence on the sources and the researchers is not immediately evident. The disjointed, unsystematic nature of Talmudic literature also contributes to obscuring these connections. At all events, many of the scholars seem to share a common internal conviction that these exegetical methods are appropriate tools of research for understanding rabbinic literature. The popularity and the intensity of this conviction fortifies the suspicion that the motivation for their adoption is not based solely on misguided scientific considerations. Ironically, the Maimonidean radicalism of the twelfth century became, in the context of modern Jewish studies, an orthodoxy in more than one sense.

II. ANTHROPOMORPHISM AND MYTH

The attempt to eliminate anthropomorphism from the Jewish tradition is the main front within the context of a far broader enterprise that seeks to liberate it

[120] Maimonides' influence on researchers of anthropomorphism in classical sources on the hermeneutic level is particularly conspicuous when compared with the paucity of his influence, if at all, in substantive philosophical issues (metaphysics, epistemology, anthropology, political theory) on Jewish thinkers since the dawn of the modern period. See Harvey, "Return to Maimonides."

[121] To a certain extent, a similar trend characterized the research of Early Christianity, especially the research of the Western Church Fathers, prior to Augustinus. See, e.g., Paulsen, "Early Christian Belief"; and on the other hand Paffenroth, "Paulsen on Augustine." See also Griffin and Paulsen, "Augustine and the Corporeality of God," and other literature cited in these studies.

from the category of myth. Jewish myth, in its many manifestations (whether recognized as such or interpreted allegorically or symbolically) is anthropomorphic. The Jewish God, from the Bible through all the complex developments of Jewish thought, is always described in human terms.[122] The denial of anthropomorphism, then, is a decisive battle in that campaign. With the removal of anthropomorphism from Jewish tradition, most of the other elements of myth disappear as well.[123]

This battle against anthropomorphism as a part of a broader campaign against myth is evidenced in the writings of E. E. Urbach cited earlier (Section I.5). His comments point in the direction taken by mainstream scholarship in Jewish studies, many of whose spokesmen were surveyed earlier. In their view, myth belongs to the essence of pagan polytheism. It contravenes Biblical monotheism at the deepest level, and the fundamental opposition thereto carried over into rabbinic literature and later Jewish tradition. Guided by this outlook, thinkers and scholars attempted to characterize the myths of the ancient Near Eastern peoples, which they regarded as being sharply distinguished from the myth-free monotheistic Hebrew Bible. The most prominent figure in this context is the Bible scholar Yehezkel Kaufmann, who developed and refined this thesis in his magnum opus, *The History of Israelite Religion*. His central argument is that Biblical monotheism is not mythic due to the Biblical God's complete "otherness" from the world, and particularly from its physical aspects. What distinguishes the Biblical God from the mythic deities is that God's "will" is liberated from the control of fate, and controls terrestrial reality.[124] Urbach, like many others, relies on Kaufmann and goes even further. These views receive their acute and impressive expression in the writings of Gershom Scholem, whose concluding discussion of "classical" (i.e., Biblical and rabbinic) Judaism evidences Kaufmann's inspiration:

> The original religious impulse in Judaism, which found its valid expression in the ethical monotheism of the Prophets of Israel and its conceptual formulation in the Jewish philosophy of religion of the Middle Ages, has always been characterized as a reaction to mythology. In opposition to the pantheistic unity of God, cosmos, and man in myth, in opposition to the nature myths of the Near-Eastern religions, Judaism aimed at a radical separation of the three realms; and, above all, the gulf between the Creator and His creature was regarded as fundamentally unbridgeable. Jewish worship implied a renunciation, indeed a polemical rejection, of the images and symbols in which the mythical

[122] Uffenheimer, "Myth and Reality," 147; Scholem, "Zelem."

[123] The view of the myth as being alien to Jewish tradition was not universally subscribed to. There were those who characterized Judaism as being predicted on myth, and tended to emphasize the uniqueness of the myth in contrast to other myths. See, e.g., Buber, "Jewish Myth," 88; Schwarz, *Language*.

[124] Kaufmann, *History* II, 244. For a survey of his distinctions and critique, see Uffenheimer, "Myth and Reality," 147; Cross, *Canaanite Myth*, Introduction; Halbertal and Margalit, *Idolatry*, 68–73; Idel, "Rabbinism vs. Kabbalism," 283, n. 4. Regarding the personality of the Biblical and rabbinic God, see particularly: Liebes, "The Jewish Myth"; Liebes, "Love of God."

world finds its expression. Judaism strove to open up a region, that of monotheistic revelation, from which mythology would be excluded. Those vestiges of myth that were preserved here and there were shorn of their original symbolic power and taken in a purely metaphorical sense. Here there is no need to expatiate on a matter that has been amply discussed by students of Biblical literature, theologians, and anthropologists. In any case, the tendency of the classical Jewish tradition to liquidate myth as a central spiritual power is not diminished by such quasi-mythical vestiges transformed into metaphors.[125]

This tendency of scholars toward outright negation of the mythic dimension of Israelite and Jewish culture is even more noticeable in the study of rabbinic literature than in Biblical studies. In our survey above, we reviewed the approaches of many scholars of rabbinic literature to the issue of Talmudic-midrashic anthropomorphism. This approach has been severely criticized by several scholars for whom it embodies a categorical fallacy that wrought tremendous damage, both to the academic study of rabbinic literature and to the study of Jewish culture at large.[126] The following passage from Yehudah Liebes gives incisive expression to this criticism:

Why is the continuum in the perception of God from the Bible to the Kabbalah not evident to people of our generation? Apparently, the root of this phenomenon is in the influence of Haskalah ideas and their later embodiments, which posited the biblical and Talmudic God above all myth, and regarded Judaism and myth as essentially dichotomous categories. This opinion is not only held by the masses, but has been endorsed by most of those who speak in the name of Judaism. [. . .] If we define myth as a baseless prejudice, then this view of Judaism's non-mythic nature is a complete myth.[127]

These comments do not detract from the validity and the importance of various distinctions between "pagan polytheism" and "Biblical (and Talmudic) monotheism" that have been proposed by a number of scholars. But they fail to distinguish between a mythic outlook and a religious approach that is not mythic. The Bible may engage in polemics against ancient myths, including those from Babylonian, Assyrian, Egyptian, and other sources,[128] but the alternative it offers is not an anti-mythic conception but an alternative myth. This statement is not merely a semantic exercise; it has implications for the direction to be taken by future research and for the basic methodological assumptions that would guide it.

[125] Scholem, *Kabbalah and Myth*, 88.
[126] Uffenheimer, "Myth and Reality," 135; Idel, *Kabbalah*, 32.
[127] Liebes, "The Jewish Myth," 245.
[128] See, e.g., Frymer-Kensky, "The Atrahasis"; Loewenstamm, "Beloved"; Clines, "The Image of God"; Weinfeld, "God the Creator in Genesis," 114–115; Cross, *Canaanite Myth*; Uffenheimer, "Myth and Reality," 166.

2

Anthropomorphism and Imago Dei – Some Basic Distinctions

Although the idea, in Talmudic literature, of man's creation in the image of God is based upon an anthropomorphic conception of God, it bears its own unique characteristics. This chapter examines a number of factors that establish the concept of Imago Dei as a unique category, distinct from anthropomorphism, enabling us to form a clearer perspective of the subject.

To begin with, it should be noted that the issue of anthropomorphism in rabbinic literature is broader, encompassing the totality of corporeal expressions relating to God, both physical and mental-emotional in Talmudic literature. The scope of scholarship devoted to this topic is immense, being a product of the copious quantity of relevant material, the philological, linguistic, and historical quandaries involved therein, and the exegetical and phenomenological questions raised. From a phenomenological perspective, anthropomorphism is not a well-defined theology; rather, the term is used generically for a cluster of diverse conceptions. The anthropomorphism of *Shi'ur Qomah*, for example, is not the same as that of the Bible, nor is it identical with that of the Talmud in all its varied sources and schools, and none of these resemble the anthropomorphisms found throughout Kabbalistic literature. Thus, each of these literary corpuses encompasses its own particular variety of anthropomorphic outlooks.

The issue of creation in the Divine image is more restricted, and the pertinent source materials, though considerable, are relatively limited. Methodologically, our inquiry will proceed cautiously, in an attempt to unravel the subtopics and to devote attention to each of them. This will further our understanding of the broader topic. Obviously, the treatment of each subtopic requires an awareness of its relation to the broader subject and to the relevant literary sources.

I. SIMPLE ANTHROPOMORPHISM AND ANTHROPOMORPHIC THEOSOPHY

How does one distinguish the issue of Imago Dei from that of anthropomorphism? Our study began with R. Akiva's statement in *Avot* (3.14) regarding the

beloved status of man who was created in the image of God. I argued that this rabbinic statement, similar to its Biblical source and proof text, reflects both an anthropology and a theosophy. Both formulations represent a conscious anthropomorphic theology, quite distinct from a simple anthropomorphic expression.

I will clarify this with an example. We read in Genesis: "When the Lord had finished speaking to Abraham, He departed, and Abraham returned to his place" (Gen 18:33). This verse is anthropomorphic in that it describes God as going and departing. Indeed, God's portrayal throughout the chapter as a mortal [*or*: as a human being] appears as something natural.[1] Its anthropomorphic quality is sharpened *inter alia* by the parallel at the end of the chapter between "And the Lord went His way" and "Abraham returned unto his place."

By contrast, the verses describing the creation of the first human being in the Image of God are a festive proclamation of a *weltanschauung*, of a sophisticated and self-reflective doctrine. Many Bible scholars are of the opinion that Genesis 1 enunciates a doctrine containing the essence of the Priestly cosmogony – one that took shape slowly and systematically over the course of many years and was formulated with structural precision.[2] The chapter concludes with the creation of man in God's image.[3] Verses 26–27 do not describe an experience of divine revelation, necessitating a resort to anthropomorphic imagery. Both God and the existence of humankind are depicted in precise "theological" terms. The idea of creation in the Divine image, being essentially speculative, is not rooted in a theophany or any other encounter with God, visual or otherwise. In contrast with the "simple" theophany, this kind of theology cannot be dismissed as an allegory, a metaphor, a prophetic vision, or an "experience of encounter." Further evidence that Imago Dei is a sophisticated, reflective doctrine is the fact that many religions share an anthropomorphic conception of divinity, but few, if any, endorse the conception of man as an image of divinity. The concept of Imago Dei is thus not a natural and integral element of an anthropomorphic theosophy.

II. IMAGO DEI IN RESEARCH

Among the various expressions of anthropomorphism in the Bible and rabbinic literature, man's creation in God's image constitutes an independent category. The Imago Dei passage poses a challenge to deniers of the anthropomorphic for an obvious reason: taken at face value, at least, it teaches that God has a human form. In light of the distinction suggested earlier between simple

[1] See Cassuto, *Genesis*, 163–165.

[2] Von Rad, *Genesis*, 45. This approach was also endorsed by all those who wrote on the first chapters of Genesis. Biblical scholars attributed the idea of *zelem Elohim* to the Priestly Source (P) which, according to the critical approach, differs from the popular sources J and E. Cf. Speiser, *Genesis*, 12.

[3] Von Rad, 55 ff.

anthropomorphism and anthropomorphic theology, the passage in Genesis confronts the deniers of anthropomorphism with an almost insurmountable barrier. In contrast with an isolated Biblical verse or midrashic passage that ascribes human features or human mental capacities to God, creation in the divine image implies an anthropomorphic theology that cannot be dismissed as a purely literary turn of phrase.

Not by chance, Maimonides, who devoted the first part of his *Guide* to clarification of linguistic issues in an attempt to expunge all traces of corporeality from the Biblical verses, began his treatise with an explication of the Hebrew term *zelem* ("image"). At the beginning of Part I, Chapter 1, he writes:

> People have thought that in the Hebrew language *image* [*zelem*] denotes the shape and configuration of a thing. This supposition led them to the pure doctrine of the corporeality of God, on account of His saying, "Let us make man in our image, after our likeness." For they thought that God has a man's form, I mean his shape and configuration. The pure doctrine of the corporeality of God was a necessary consequence to be accepted by them. They accordingly believed in it and deemed that if they abandoned this belief, they would give the lie to the biblical text.

These "people" are "compelled" as it were, to impute to God a shape and configuration because of their understanding of the Biblical phrase "Let us make man in our image."[4] Being fully cognizant of the theological, quasi-speculative uniqueness of this passage and its implied conception, Maimonides premised the "people's" corporeal interpretation on the Imago Dei passage rather than on any other Biblical verse or section that expresses, overtly or by implication, an anthropomorphic conception.

As a result, many scholars commenting on the issue of anthropomorphism in rabbinic literature, particularly those intent on purging the text of corporeal conceptions, chose specifically to address the concept of *zelem*. The common denominator in most scholarly treatments of the idea of Imago Dei in midrash and Talmud is the attempt to blur its theological aspect, concentrating instead on its anthropological aspects and especially its ethical and halakhic implications.

This is the path taken, for example, by Abraham Geiger in interpreting R. Akiva's famous dictum (*Avot* 3:18): "Beloved is man for he was created in the image; a greater love was bestowed upon him, [that] he was created in the image, for it is written, 'In the image of God made He man' (Genesis 9:6)." Geiger argues that R. Akiva deliberately dissociated the term *Elohim* from that of *zelem*. Basing himself on the very succinct language of Scripture, which fails

[4] Maimonides (*Guide* 1.1) also invokes another, intellectually based reason for "peoples' tendency to corporeality" and asserted "that they would even make the deity to be nothing at all unless they thought that God was a body provided with a face and a hand, like them in shape and configuration." Moreover, he devotes the first chapter of his treatise to the exegetical treatment of the term *zelem*. Maimonides' interpretation of *zelem is* dealt with by Lorberbaum, "Maimonides on Imago Dei."

to explain the nature of the image in which man was created, Geiger writes, "It is an entirely intentional and conscious move on the part of the great *tanna* [i.e., R. Akiva] that he, too, refrains from ascribing corporeality to the Creator [by saying], 'Beloved is man, for he was created in the image' – that is, in his own image, that of humankind – and not 'Beloved is man, for he was created in the image of *God*.' "[5] However, Alexander Altmann pointed out that the statement by Rabbi Akiva's student, Rabbi Meir: "Beloved is the human being, for he was created in the image of God"[6] confutes Geiger's contention.[7]

E. E. Urbach is convinced that in Rabbi Akiva's statement, "the starting point is God, not man." However, in explaining its meaning (along with others that expound the concept of creation in the divine image or which are based upon it), Urbach states, "In the way man was created and in the form that the Creator gave him, two principles find expression – that of human unity and that of the individual worth of each man" – and nothing more.[8] Altmann's formulation is similar: "The Mishnah [. . .] accepted the *homo imago dei* concept in its Philonic and, ultimately, Platonic sense, but rather than dwell on its theological implications, it put it to use in the context of halakhah. It [the image of God] is intended to serve as a reminder of the dignity and unique value of each individual"[9] Apart from characterizing the Rabbis' anthropology and theology as Philonic-Platonic – in other words as anti anthropomorphic[10] – Altmann dismisses the theological aspect of the Imago Dei idea in the world of the Rabbis and, like Urbach, places it in the realm of ethics and, especially, of law.

A similar tendency is evidenced in the approach taken by Yehezkel Kaufmann. A central theme of his monumental and influential *History of Israelite Religion* is the distinction between paganism, which is mythical in its very essence, and Israelite monotheism, which was purified of any mythic element. Kaufmann repeatedly stresses that "Israelite religion defeated anthropomorphism in one basic and decisive way: it portrayed God as being unrelated to the material aspect of the world." God is "spirit and not flesh," He is "beyond all connection to the laws of the world and nature."[11] However, Kaufmann insists, Israelite religion "did not defeat the metaphor of image. In metaphysical naïvete, it ascribes a form to God."[12] The metaphors of God's image, in his understanding, are particularly emphasized in the Midrash and

[5] See Geiger, *Judissche Zeitschrift fur Wissenschaft und Leben* I (1862), 40–41, and see his article "'*Zelem Elohim*' in *The Bible*," 332. Geiger's interpretation was inspired by the translation and interpretation that were rejected by Ibn Ezra (at Gen 1:26).

[6] *Avot de-Rabbi Nathan*, Version A, Chapter 39 (p. 162).

[7] Altmann, "Imago Dei," 14.

[8] Urbach, *The Sages*, 217; cf. Urbach, *Arugat ha-Bosem*, 79–80.

[9] Altmann, "Imago Dei," 17.

[10] Altmann adopts the same approach in other studies too. See, e.g., Altmann, "The Doctrine of Creation." For a similar view, see Baer, "Eschatology," 9.

[11] Kaufmann, *History*, II.227.

[12] Ibid., 227.

Talmud.[13] Nevertheless, in addressing the topic of Imago Dei Kaufmann writes, "The creation of man in the image of God is understood [by the aggadah] in the spiritual sense too, and it provides the basis for man's [elevated] moral stature." Even Kaufmann, who did not recoil from ascribing to the Bible what might be called a "non-corporeal anthropomorphism," tends to read the writings of the Talmudic sages as an ethics-based conception of the idea of "the image of God." Kaufmann does not "deny the literal meaning of creation in the image of God."[14] On the other hand, he asserts an absolute dissimilarity between the Biblical and Talmudic God, on the one hand, and the world and mankind, on the other. The simple meaning of the Biblical text (and, more pertinent to our discussion, of the midrash) – the conception of God as bearing human qualities, both physical and mental – does not, in Kaufmann's opinion, constitute a significant component of the idea of creation in the divine image.[15]

As the tendency of the sources toward anthropomorphism becomes more pronounced, so too does the tendency of scholars to deny its existence. If simple anthropomorphic speech is interpreted in the scholarly writings as "a theological allegory," the idea of the divine image – a fundamentally theological idea – is reduced to anthropology, or simply to ethics and law.

III. IMAGE AND PRESENCE

There is another reason for the above-mentioned tendency of scholarly literature regarding the concept of creation in God's image, which lies in the more profound distinction between this concept and simple anthropomorphism. This distinction arises from the meaning of the term *zelem* (image). The word *zelem* strikes a particularly jarring note in the context of the Jewish tradition. From its very inception, the Jewish people declared an unrelenting war on image-worship.[16] Idol worship in all forms and in all its stages was identified by the Israelite heritage with idolatry. This idea was expanded and accentuated in rabbinic law. The widely accepted reason for this prohibition is that the God of Israel is non-corporeal and transcendent in relation to any form. Ostensibly supported by a number of Biblical verses, this understanding became a lever wielded by many scholars in order to negate the presence of anthropomorphism in Biblical and Talmudic sources, which are in fact blatantly anthropomorphic. This trend is particularly evident in the treatment of those sources dealing with the idea of creation in God's image.[17]

[13] Ibid., 235.
[14] Ibid., 237.
[15] Kaufmann does not define the nature of "the literal meaning of the image of God.". It may be presumed that in his view the literal sense thereof is "the non-corporeal image" of God.
[16] Exod 20:4–5, Deut 5:8–9; 4:12–18; cf. Barasch, *Icon*, 12 ff, who correctly notes that the reason and the scope of the Biblical prohibition of images is entirely obscure.
[17] Regarding the Bible, see Clines, "The Image of God," 59, and references at nn. 25–30.

Various scholars, including Kaufmann, observed that this was not in fact the reason for the strictness of the interdiction of image-worship in the Jewish tradition, for the Bible, like the post-Biblical sources, depicts God as having a form. Thus Kaufmann gave a different explanation for the prohibition, with which other scholars concurred, even if they did not accept its supporting rationale but offered other rationales instead.[18]

Prima facie it is paradoxical that the Bible, and the Sages in its wake, prohibits image-worship while at the same time describing man as being "the image of God." This concept, or thought-structure, underlies a myriad of conceptions and religious rites vehemently negated by the Bible and the Rabbis (and subsequently by the entire Jewish tradition), yet this very term is present and operative in the constitutive, solemn narrative of Creation in the first chapter of the Bible, and thereafter in many midrashic and Talmudic sources, describing the relationship between human beings and God. Toward the end of this study, I will offer a tentative solution to this paradox, at least with respect to rabbinic literature.

What is a *zelem*? As noted at the beginning of this study, *zelem* is the equivalent of the Greek *eikon* – or, in the version of the Greek term often used in rabbinic literature *ikonin* – which might best be rendered in English as "image."[19] The concept *eikon* expresses the type of relationship that underlies most of the image cults prevalent throughout the ancient world, one predicated of two physical objects that share a common image. Based on the fact that an object, a prototype, is reflected in its image, the concept of *zelem* expresses the perception that the object is *present* in its image. No absolute ontological gap divides the *zelem* from that which it represents. To be sure, the prototype is not ontologically identical with its image; the image may be described as an *extension* of the prototype, which maintains its own separate existence. According to this same logic, there is no absolute ontological divide between different images of the same prototype. They, too, share something of their essence with one another, as extensions or "limbs" of the same object. This relationship will be termed here "the image as presence," "iconism," or "an iconic relationship."

It was in this sense that the term "image" (*zelem* or its equivalents) or, more precisely, images themselves, were used throughout the ancient world – in Mesopotamia, in the Greco-Roman world, and in early Christianity – and later in the Middle Ages and early modern times. Thus, the cult of images should not be understood as the product of a fetishist conception, which identifies the divinity with its image.[20] While identifying the divine as *partaking in* its image, believers in these cultures acknowledged that the divinity existed independent of and separate from its image: in heaven, in the underworld, or in some other remote and obscure location. The term "extension" is apposite for this religious

18 See, e.g., Halbertal and Margalit, *Idolatry*, 47–48, 73–74; Uffenheimer, "Biblical Monotheism."

19 In the Bible and Talmudic literature the terms "image" and "likeness" (*zelem* and *demut*) are synonymous, and will be used in that sense in this study.

20 Jacobsen, "The Graven Image," 18–19, and compare Kaufmann, *History*, II:255 ff.

phenomenon as well. The most extensive use of images was indeed for ritual purposes. The reasons are obvious: the image is a manifestation, here and now, of what is normally remote and hidden.[21] Hence, through the image the believers can feel the deity's proximity. In addition to being imbued with the divinity's presence, the image was also endowed with the divinity's powers, and accordingly god-images were employed for magical purposes as well. Although there were cultures that celebrated particular rituals for the dedication of their god-images, these actions were not the decisive factor, or at least not the only factor in charging the images with divine presence and powers. The deity dwells in his image primarily by virtue of the figurative similarity (isomorphism) between them.[22]

The use of images is not limited to terrestrial manifestations of the god's presence. The conception of "image" depicted above enables any object to be manifested in its image. William Hallo mentions a particularly instructive example from Mesopotamia at the beginning of the second millennium (approximately 1900) BCE.[23] Hallo describes a practice in which "prayer-letters" enabled worshippers to contact their gods, who were present in the images in their temples.[24] Prayer-letters were the inexpensive method of worshipping the gods. The preferred, but immeasurably more expensive method, was to erect an image of the worshipper himself in front of the image of the god in the temple, with the prayer engraved upon it. The two images, serving as extensions of the god and its worshipper, bestow the worship ritual with a permanent, ongoing nature, in which the worshipper is in a position of worshipping the god – in prayer – at all times. In fact, in Mesopotamia there were temples in which the images of the divinity were (also)worshipped by the images of those who believed in him, which were positioned there permanently. Another example of the use made of images of nondivine objects was the practice of punishing people by inflicting damage on their images.[25] These examples demonstrate the truth of the argument that the use of imagery should not be seen as crude fetishism but rather as the manifestation or extension of the object – for our purposes, a god – that also has a separate existence.

[21] Barasch, *Icon*, 28.

[22] There were places in which the images were animated by means of rituals specifically designed for that purpose, but in these cases too, the resemblance was essential for the manifestation of the god in his image. See Winter, "Idols of the King"; Barasch, *Icon*, 39 ff; Morenz, *Egyptian Religion*, 155–156; Horowitz, "Make Yourself an Image," 339–342.

[23] Hallo, "Prayer Letters," I.25. Regarding this phenomenon, cf. Von Soden, *The Ancient Near East*, 189–190.

[24] On this phenomenon in the Bible, and especially in Psalms, see Hallo, "Prayer Letters" ibid; Kugel, "Psalms."

[25] For a highly instructive midrashic example, see *Mekhilta de-Rabbi Ishmael*, *Pisha*, 13 (p. 44); *Mekhilta de-Rashbi*, *Bo*, 12 (p. 29); Lieberman, "After Life," 523, n. 72; and see Faraone, "Voodoo Dolls." For a general discussion, see Freedberg, *The Power of Images*, Chapter 10, 263 ff. A different kind of example is the use of the icons of holy people, see Belting, *Likeness and Presence*, 80 ff.

I mentioned earlier that the meaning of the term *zelem* in ancient cultures as "image" must be inferred from its use, or more precisely, from the use made of objects serving in that capacity. Prior to the sixth century BCE there was no conceptual discussion in the ancient world of the meaning of the term, or of the ontological conception it implied.[26] On occasion it obscured the function fulfilled by the objects to which the term refers, in particular places and contexts. In the great majority of cases, however, these functions are in no way incongruous with our proposed understanding of these terms. The term "image" has been explained here with a certain degree of theoretical precision, and the particular nature of the relationship it embodies[27] is attested to by an analysis of the role played by images in the aforementioned cultures.[28] A number of scholarly studies have focused on "images" and their functions in religious rites and in social, legal, and political contexts, all of which are inextricably intertwined in these cultures, and all of which concur regarding their iconic basis.[29]

"Iconic ontology" is not alien to philosophical thought in antiquity. It constitutes the foundation of Platonic metaphysics and of the neo-Platonic tradition ensuing therefrom. Admittedly, Plato's writings contain no explanation of the ritual practices of idol-worshippers, but his philosophy is predicated on his "doctrine of ideas," which may be regarded as the conceptual foundation for the worldview underlying those practices.[30] The "ontological continuity" between the idea and the concrete objects fashioned in its "image" is explained by Plato, *inter alia*, by means of the phrase "taking part." Several passages in the Platonic dialogues indicate that the "idea" is a pattern or an ideal configuration (not necessarily an absolutely abstract entity).[31] In other words, according to Plato, the idea is somehow present in its physical reflections. We might therefore say that "primitive" iconic ontology has a Platonic structure: "Plato," as Mircea Eliade put it (in a slightly different context), "could be regarded as the foremost philosopher of 'the primitive mentality,' that is, as the thinker who succeeded in giving philosophic currency to the life forms and practices of archaic humanity."[32]

[26] Kitzinger, *The Art of Byzantium*, 87. Theories regarding the image rituals only began to develop in intellectual debates beginning as of the eighth century CE. See Barasch, *Icon*, 185 ff.

[27] Ibid., 25.

[28] Regarding the possibility of deducting a "world view" from ritualistic practices, see Geertz, *Interpretation*, 111 ff; Ricoeur, *From Text to Action*, 144–167.

[29] Barasch, *Icon*, Chapter 2. Regarding the religious-political function of the image ritual in Mesopotamia, especially in the context of royal images, see Jacobsen, "The Graven Image"; Jacobsen, *Tamuz*, 2–4; Winter, "Idols of the King," 34; Porter, "Gods' Statues and Political Policy"; and, in Egypt, see Morenz, *Egyptian Religion*, 150–156. Regarding image ritual in the Greco-Roman world, see Lane-Fox, *Pagans and Christians*, 135 ff; and Gaiger, "Emperor Worship." Concerning Christianity during the first centuries, see Kitzinger, "The Cult of Images"; Gager, "Body Symbols," 354–356.

[30] An echo of the subject of images may be found in the famous parable of the cave. See *Republic* 7:515–516.

[31] See, e.g., *Parmenides*, 132–133.

[32] Eliade, *The Myth of the Eternal Return*, 34.

It was Maimonides who presented one of the most accurate characterizations of the worship of images from the perspective under discussion. As one of the pioneers in the anthropology of pagan religion, Maimonides' comprehensive investigation of the foundations of image-worship honed and deepened his uncompromising campaign against idolatry.[33] He said of himself, "I . . . have read in all matters concerning all of idolatry, so that it seems to me there does not remain in the world a composition on this subject, having been translated into Arabic from other languages, but that I have read it and have understood its subject matter and have plumbed the depth of its thought."[34] Maimonides' view was that image-worship was not based on the fetishist conception; the idol-worshippers' images were not gods, but only their representations. He writes:

> Now you know that whoever performs idolatrous worship does not do it on the assumption that there is no deity except the idol. In fact, no human being of the past has ever imagined, and no human being of the future will ever imagine, that the form that he fashions either from cast metal or from stone and wood has created and governs the heavens and the earth. Rather it is worshipped in respect of its being an image of a thing that is an intermediary between them and God.[35]

According to Maimonides, image-worshippers do not view the images as mere configurations of metal or as lifeless stone and wood. They attract to themselves the powers of the gods they represent – whether stars or objects – and are even animated by them. Maimonides gives the following account of the Sabaean faith, which he regarded as emblematic of pagan religion prior to the monotheistic religions[36]: "And they built temples, set up statues in them, and thought that the forces of the planets overflowed toward these statues and that consequently these statues talked, had understanding, gave prophetic revelation to people – I mean, the statues – and made known to people what was useful to them."[37] According to Maimonides, these worshippers believed that their images embodied souls and powers, the latter being drawn to them, partially in accordance with talismanic principles. According to the pagan outlook, the similitude of the stars and their images-replications is necessary in order for their "spirituality" to be drawn to them.[38] Maimonides conjectured that idol worship is based on the

[33] Maimonides made extensive use of his knowledge of pagan practices in those chapters of the *Guide* dealing with the rationales for the commandments. See *Guide* III.29; cf. Pines, "The Philosophical Sources," 163–164.

[34] See Marx, "The Correspondence," 349–358. Regarding this letter, see Lerner, "Maimonides' Letter", 143–158; cf. Maimonides, *Hilkhot Avodat Kokhavim* 2.2.

[35] Maimonides, *Guide* I.36 (83); *Mishneh Torah, op cit.*, 1.1–2.

[36] Regarding the beliefs of the Sabaens, he states that their belief was "prevailing throughout the land" – *Guide* III.29 (516). On the Sabaens in general and the sources cited by Maimonides specifically, see Pines, "The Philosophical Sources," 163–164.

[37] *Guide* III.29 (516).

[38] It is nevertheless important to note that Maimonides knew that, according to the idolaters' conception, there were other methods for drawing the "powers" of the stars to their images, upon the fulfillment of certain conditions. See, e.g., *Guide* III.29.

iconic perception that the life-force of a divinity or star inheres in its image due to their structural similitude.[39]

Criticism of the ritual use of images long preceded Maimonides. It originated in philosophical circles, beginning with the pre-Socratics.[40] The philosophers' objections were actually the beginning of the critique of religion, and concentrated on two assumptions implicit in these rites: the belief that God has a shape or form, and the concept of "image," implying that the object represented – in this case the god – is present in its image. These arguments were first articulated by a narrow stratum of intellectuals in the pagan world, particularly in Greece and subsequently in the neo-Platonic tradition,[41] but they are highly instructive for understanding the concept of "image" that prevailed among all those who were the target of their critique.[42]

The above discussion also highlights another difference between "naïve" anthropomorphism and the idea of the human being as Imago Dei. "Naïve" anthropomorphism describes theophanies in human terms while maintaining the distance between God and man.[43] In the conception of Imago Dei, by contrast, this distinction is blurred. Divinity becomes manifest in its image – man – which in turn becomes a quasi extension of divinity. As we shall see, this conception is apparently to be found in the Bible, and even more so in tannaitic literature.

As distinct from the image conceptions that prevailed in most ancient cultures –which scholars have indirectly inferred from the ritual practices of those cultures – the image conception finds "doctrinal" expression in the Bible. The core of the concept of "image" (*zelem*) in the context of the Biblical creation of humanity in Genesis 1 is found in the element of presence – the immanence of

39 It should be note that according to Maimonides this perception was profoundly wrong because it contradicts metaphysical principles. See *Guide* III.29 (517–18).

40 For example, Xenophanes and Heraclitus; and cf. Meijer, "Philosophers and Religion in Hellas," 221–224; Barasch, *Icon*, 221–224.

41 Regarding the first assumption – the ascription of a form to the divinity – the philosophers' attitude was one of derision and scorn. See, e.g., Aristotle, *Metaphysics*, XII 8.1074, a31–b8. This was not the case with the second assumption. The relationship between a substance and its image engaged Greek philosophers since the time of Plato. The problem that troubled Plato and which served as the cornerstone of his theory of 'Ideas' was the relationship between the idea and the tangible reality. One of the solutions (which he rejected) utilized the metaphor of "partaking of" which indicates their connection or ontological dependence. See Parmenides, 133. Cf. the use of the term 'eikon' in the parable of the cave. *Republic*, 515–517, in which the ideas are ontologically connected to the objects that they represent. See also *Cratylus*, 431; and *infra*, Chapter 6.II.1 Similar approaches are also found among the Neo-Platonic philosophers, from Plotinus onwards; see Barasch, Icon, 27 ff. Regarding Porphirus and Umblichus, see below.

42 These critiques resemble the prophets' critiques of idol-rituals. See Deut 27:16; Isa 44:9–20; Jer 10:3–9; Ps 115; and cf. Barasch, *Icon*, Chapters 1, 3.

43 On the distance between God (anthropomorphic) and man in the Mesopotamian culture, see, e.g., Jacobsen, *Tamuz*, 19–20.

God in his image, that is, in humanity. In my view, this element is already present in the Bible,[44] and is emphasized and reinforced in tannaitic literature.[45]

The theological-theosophical dimension and the element of presence in the idea of Imago Dei are not unique to rabbinic literature; indeed they characterize its meaning in many of its subsequent historical formulations. Maimonides, for example, identifies the general term *zelem* as "the notion by virtue of which a thing is constituted as a substance and becomes what it is" – in other words, with the essence of the thing in the Aristotelian sense. The "essence" of a human being is his intellectual cognition: "It was because of this something, I mean because of the divine intellect conjoined with man, that it is said of the latter that he is 'in the image of God and in His likeness'; not that God … is a body and possesses a shape."[46] It is on account of this notion that it is said of man "'In the Image of God created he Him' … not the shape and configuration of the parts of the body," thus clarifying that, together with the denial of an anthropomorphic element in God, Maimonides identifies the divine aspect of mankind with the (actualized) intellect. Even according to Maimonides' philosophical interpretation, Imago Dei retains a powerful element of "the presence of God." And even more so; the image of God, the intellect, is imbibed by man as a divine overflow of the Active Intellect. The apprehension of each man is a function of the degree of his preparation and his cognitive-intellectual capacity. Intellect blends with a "divine" entity (the Active Intellect), which is present in the intellect of the

[44] Barr, "Theophany," 38; cf. Barr, "The Image of God." There are scholars who argue that the Priestly idea of creation in the divine image was a theological revolution. The divine image had previously been ascribed exclusively to the Babylonian king, and the book of Genesis transformed it into the legacy of mankind in its entirety. See Loewenstamm, "Beloved," 11. This further supports the claim regarding the doctrinal nature of the image idea in Genesis. Regarding the king in the divine image in Mesopotamian culture, see the studies of Jacobsen, Winter, and Porter (*supra*, n. 29). Regarding the polemic with the Babylonian myths evinced in Gen 1–9, see Frymer-Kensky, "The Atrahasis"; but cf. Weinfeld, "God the Creator," 113–116, who maintains that the Biblical conception of Man's creation in the Divine Image originates in the Egyptian belief of *mari-cara*. It should be stressed that, if the Bible was indeed involved in a polemic with these myths, then the issue did not concern the issue of image as presence, but rather the subjects to which it applied. For a critique of the comparison of the subject of Imago Dei in Genesis with the royal theology of Mesopotamia, see Westermann, *Genesis*, 158.

[45] The doctrinal status of Genesis 1 (Priestly) continued with the tannaim. Their esoteric interpretation of this chapter, referred to as "*Ma'aseh Bereshit*" (see *m. Hag* 2), represents the theosophic doctrine of the tannaim (which is supplemented by *Ma'aseh Merkavah*., that interprets Ezekiel's vision of the Divine Chariot in Ezekiel 1). The continued development of these doctrines is found among the philosophers and mystics of the Middle Ages. There are strong grounds for claiming that the tannaitic dicta pertaining to creation in the image is also part of *Ma'aseh Bereshit*. After all, this is the pinnacle of the story of Genesis 1. Conceivably, the issue of creation in the divine image is the bridge between *Ma'aseh Bereshit* and *Ma'aseh Merkavah*, because the climax of the latter is "the likeness as the appearance of a man" which is apprehended by the prophet (Ezek 1:26).

[46] *Guide* I.1 (23) see also *Hilkhot Yesodei ha-Torah* 4.8; and cf. Harvey, "How to Begin."

terrestrial human being, and at that stage the person is "in the image of God."[47] In contrast to the students of tannaitic literature who were influenced by him, Maimonides himself did not interpret the concept of man's creation in the divine image in a manner that denied its theological aspect, or that denied the perception of the image as presence.[48] These elements (likewise) characterize the understanding of the Imago Dei idea in the writings of the Kabbalists from the beginnings of the Kabbalah in the twelfth century and throughout its history, including its various developments and offshoots.[49]

The assumption of God's immanence within His image is the basis of an important methodological conclusion: The material germane to the issue of the divine image is not necessarily restricted to sources that employ such terms as *zelem*, *demut*, *ikonin* and others in order to depict the divine–human relationship. It is hence incumbent upon researchers to examine further whether there are sources either based on, or implying a conception of, man as God's image, even without direct mention of those terms. Indeed, as we shall see, the idea of man as God's image is a thought-structure discernible even in those sources that make no explicit mention of the terms generally used to indicate such a conception.

The iconic element in the "image" relationship explains the tendency among scholars to deny or downplay the theosophic dimension of the idea of creation in God's image in Talmudic literature. Any denier of anthropomorphism in the Bible and in rabbinic literature would have difficulty in attributing a theological connotation or significance to the idea of the divine image, even as metaphor. For these scholars, a theological dimension of the idea of creation in the divine image is a philosophical nonstarter, not only because it endorses an openly anthropomorphic doctrine, but primarily because it utilizes terminology identified with idolatry, in which the ontological chasm between the divine and the mundane is blurred. The idea that human beings were created in the divine image goes even further in that direction, by declaring that God is manifest and present in man.[50]

47 See, e.g., *Guide*, II.36 (369 ff), *Hilkhot Yesodei Ha-Torah* 2:7, 4:6, 7:1; compare, Lorberbaum, "Maimonides on Imago Dei."

48 Scholars of Talmudic literature were influenced primarily by Maimonides' doctrine of negative attributes, and not by his alternative conception of divinity, which is both Aristotelian and affirmative, whereby God is the perfect unity of the *intellectus*, the *ens intelligens*, and the *ens intelligible*. It is this conception, and not the *via negativa*, that underlies Maimonides interpretation of the "Image of God." See Pines, "The Philosophical Sources," 141.

49 See Scholem, "Zelem," and particularly, Lorberbaum, "Nahmanides' Kabbalah on *Zelem Elohim*."

50 The thought complex to be reconstructed below, based on the tannaitic literature, assumes that there is an isomorphic relationship between the form of God and the form of Man, as a result of which God is immanent in Man. Naturally, the claim that God has a form begs the question regarding the "matter" of the body of God. This question does not concern us, because the discussion below focuses on the equivalence of God's form and Man's form, and its theological,

Contemporary research regarding the question of Imago Dei in rabbinic literature has reached a stage comparable to the state of research of the same question in Biblical literature at the end of the 1930s. Until then, Biblical studies in general, and particularly those regarding the topic under discussion, were governed by certain basic methodological and theological assumptions similar to those regnant today in the study of rabbinic literature.[51] Since then, Biblical studies have taken considerable strides regarding our topic; it has liberated itself from theological and dogmatic assumptions, proposed new questions for discussion, and developed methods of confronting them. The approach adopted has consisted of an examination of the concept in a broad historical and phenomenological context: in myth, theology, law, and rites. Viewed from these perspectives, the idea is then compared with extra-Biblical material.[52] An attempt to answer the questions posed above requires the adoption of a similar approach toward rabbinic sources, paying attention to their unique characteristics and the philological, linguistic, and exegetical challenges they pose. The achievements in this area of Biblical scholarship are more than simply a source of inspiration for the research of rabbinic literature. Its conclusions may also have implications for our understanding of "the image of God" in the latter corpus, which may in turn shed light on the Biblical concept of Imago Dei.

IV. ANTHROPOMORPHISM AND THEOMORPHISM

I wish to turn for a moment to the term "anthropomorphism." It originated in an eighteenth-century critique of religion, and denotes concepts of divinity that ascribe to God a human form (physical or figurative) and qualities (mental and psychological).[53] This critique goes back to an ironic fragment attributed to Xenophon (fifth century BCE): "If oxen and horses had hands ... they would portray God as an ox or a horse."[54] Augustine resorted to a variant of this term in his denunciation of the "anthropomorphists" who, because of "their corporeal thinking, picture God in the form of a man, who is fundamentally corrupt."[55] The term bears a connotation of opprobrium and derision, both on the part of atheists and on that of philosophers and mystics, who believe in an abstract, transcendent God. In their view, anthropomorphism is rooted in a feebleness of intellect and spirit, which resulted in "man creating God in his

halakhic-normative implications, irrespective of the "matter" of which God consists. Regarding this question, see Goshen-Gottstein, "The Body as Image," and Aaron, "God's Body."

[51] See Clines' summary in "The Image of God," 53–61.

[52] Considerations of space preclude an enumeration of all the sources concerning Genesis 1 and the other Biblical verses dealing with Man's creation in the Image of God. See summary in Clines (ibid.) to which I will add: Barr, "Theophany"; Barr, "Image of God"; Miller, "Image and Likeness of God"; Frymer-Kensky, "The Atrahasis"; Loewenstamm, "Beloved"; Weinfeld, "God the Creator"; Driver, *Genesis*; Speiser, *Genesis;* Von Rad, *Genesis;* Greenberg, "Criminal Law."

[53] DK 15–16; Werblowsky, "Anthropomorphism," 316–317.

[54] See Meijer, "Philosophers and Religion in Hellas," 221.

[55] *Patrologia Latina* 42:39. Werblowsky, "Anthropomorphism."

image."[56] This tone is shared, explicitly or otherwise, by most of the scholars whose positions are discussed above.[57] Another criticism of the term "anthropomorphism" is that it portrays a flat and transparent God, divested of any mystery. As Augustine writes, "A comprehended God is no God."[58] By contrast, the God of the philosophers and the mystics is remote, mysterious, and hidden (*deus absconditus*), embodying all that is profound and essential in religious consciousness.

Regardless of the theoretical validity of these criticisms, they fail to grasp the fundamental phenomenology of anthropomorphism. The phenomenology of anthropomorphism, like that of any worldview, needs to be understood "from within," from the perspective of the faithful. The "internal" perspective is of particular importance with respect to the concept of man's creation in the image of God. A characterization of this conception as man's projection of his image, his intelligence, his emotions, his conscience, and the like onto God is external to the religious consciousness in which this conception originated, which presumes the fundamental and principled primacy of God over man.[59] From that perspective, the appropriate description of Imago Dei is not "God is anthropomorphic" but rather that "man is theomorphic" as it is man who was created "in the image of God."[60] This inversion is essential for an understanding of the issues to be discussed below, which place less emphasis on the human dimension of God and more on the divine dimension of man.[61] This inversion becomes even clearer if we recall that the idea of "image" expresses a conception of the human being as an extension of God, and is particularly important for an understanding of its theurgic dimension and the laws deriving therefrom.

From a phenomenological perspective, the claim that the anthropomorphic God is superficial and lacking in ineffability is also misleading. In an article entitled "The Logic of Biblical Anthropomorphism," Edmond La B. Cherbonnier argued that the Biblical method for maintaining the divine mystery is superior to that of the mystics. Cherbonnier shows that the God of the Bible is neither

[56] Rosenzweig, *Naharaim*, 35.

[57] See Ginzberg, "Anthropomorphism," 621, who quotes Zeller and others; see Rosenzweig, *Naharaim*, 34.

[58] Cherbonnier, "The Logic," 5; *Sermons*, CXVIII, 5.

[59] Urbach, *The Sages*, 217, Uffenheimer, "Myth and Reality," 152.

[60] Rosenzweig, *Naharaim*, 35.

[61] From a semantic perspective, the identification of Imago Dei with the term "anthropomorphism" is incorrect for, as demonstrated by Twersky ("Similarity"), the relationship of similarity is not symmetric: If *a* resembles *b*, this does not mean that *b* resembles *a*. We would say that a picture resembles a person, or that Korea resembles China, but not the reverse. The reason is that we tend to ascribe more importance to the prototype *b* than to the variant *a*, the variant bears a greater resemblance to the prototype than the reverse. Twersky notes that the asymmetry of the similarity relationship is particularly striking with respect to metaphors; for our purposes, we would say that Man is similar ("in the image of") to God, but this does not mean that God is similar to Man. From this perspective as well the conception of *zelem* does not necessarily diminish from the sublimity of God.

superficial nor unambiguous. To the contrary: precisely because of his "humanity" the Biblical God is complex, multifaceted, unpredictable and, therefore, mysterious. The decision to reveal or to conceal himself is always God's decision. Knowledge of God is inevitably *a posteriori*, based on experience. Cherbonnier summarizes, "The cognition of the biblical God is similar to the cognition of the other." Just as the latter is always only partial, thus retaining an element of mystery, all the more so is knowledge of God, who is inevitably a particularly mysterious "Other." These observations are particularly apposite with respect to the Talmudic conception of divinity. Even though the God of the Bible and the Talmud also bears other (super/non-human) features, Cherbonnier is correct in stating that, rather than remove his mysterious dimensions, the "humanity" of the Biblical divinity intensifies them.

The goal of this study is to reconstruct a worldview or thought-structure "from within" – that is, from the perspective of its devotees. Just as I will endeavor to avoid applying theological or metaphysical theories to the sources, I will similarly attempt to avoid subjecting them to theories drawn from the realms of psychology, sociology, anthropology, or the like. Other than philological, linguistic, and historical considerations, the process of reconstruction in this study is guided by the "inner logic" of the material at hand. Accordingly, I will try to limit the use of terms foreign to the language of the sources, especially those that carry weighty theoretical baggage. Such terms, in those few instances in which they appear in the discussion, will be employed mainly to clarify how my suggested reading of the material under consideration is different from other manners of reading suggested heretofore.

3

Halakhah and Aggadah

I. HALAKHAH AND AGGADAH IN RESEARCH

I noted earlier that scholars tend to limit the scope of the tannaitic conception of Imago Dei to the spheres of morality and halakhah. Nevertheless, scrutiny of references to Imago Dei in midrashic and Talmudic literature suggests that the idea also extended to that part of Talmudic literature that does not directly affect halakhic matters – namely, aggadah. The aggadic elaboration of Imago Dei is suffused with theological significance. Moreover, a deeper look at the halakhic sources reveals that they are similarly suffused with these aspects. Talmudic literature presents a multifaceted conception of Imago Dei involving anthropological, ethical, and political foundations, all of which are reflected in both halakhah and aggadah. The variegated aspects of this idea are seamlessly interwoven, all deriving from their common theosophical core. This need not surprise us, as the conception of Imago Dei, in its most fundamental sense, is rooted first and foremost in "divine matters." One of the conclusions of this study is that halakhah and aggadah are inseparably intertwined regarding the subject of Imago Dei.

Prima facie, this conclusion is hardly novel: both halakhah and aggadah originated in the same religious schools, usually being derived from study and extrapolation based on the same sanctified source: the Bible. Furthermore, these two seemingly distinct literary genres originate within the same literary collections. Halakhah and aggadah, interwoven and almost inseparable, comprise the major part of the Talmudic literature: *midrashei halakhah*, Mishnah, Tosefta and the Babylonian and Jerusalem Talmud.[1] This literary feature characterizes the Bible as well, which similarly integrates statutes and narratives. In this sense, too, the Biblical canon established the format of Talmudic literature, which relies upon it.

[1] Zunz, *Sermons*, 44, notes that aggadah comprises about three-sevenths of the *Sifre*. See Albeck's notes (ibid.), *ad loc.*; Herr, "Midrash." Regarding the Tosefta, see Zunz, *Sermons*, 46; Frankel, *Ways of Aggadah*, 5.

Although the terms "halakhah" and "aggadah" appear as distinct terms in the tannaitic sources, they are neither mutually exclusive nor antithetical.[2] The authors of the midrash were also the formulators and transmitters of the halakhah. From their perspective, as well as from that of the editors of the midrashic compilations, there was a single, unified literary entity, comprising halakhah and aggadah, theosophy and law. In the words of Yaakov Sussman: "Halakhah and aggadah are two sides of the same coin – a single ideational world and a single literary corpus, all authored by the very same sages – and it is absolutely impossible to distinguish between them."[3]

Nonetheless, with few exceptions, scholarship has generally shied away from examining the concrete points of contact between halakhah and aggadah in Talmudic literature. Scholarly literature has generally been divided between study of halakhah and that of philosophical and hermeneutical midrash, and only rarely do scholars trained in one field have resort to materials located in the "other." This suggests that many scholars did not subscribe, at least for purposes of their own research, to the assumption of a strong connection between halakhah and aggadah. With the exception of E. E. Urbach, who emphasized the links between halakhah and aggadah,[4] many scholars, including those who wrote after him, generally tend to regard them as distinct literary categories. As a result, both methodologically and phenomenologically the two areas were classified as separate areas of research.

But even those studies that combined halakhah and aggadah failed to demonstrate their substantive interconnectedness, and the relation between the two was generally expressed in one of the following ways: (a) in passing – studies devoted to halakhah accorded only incidental significance to the aggadic sources and, conversely, those focusing on aggadah dealt perfunctorily with halakhic sources; (b) selectively – studies that focused solely on halakhah tended to ignore "obscure" aggadot, and even those that dealt with aggadot failed to discern in them any traces of the halakhah; (c) rationalistic interpretation of aggadic sources in accordance with the categories surveyed in the Chapter 2; (d) discussion of the aggadah within the context of *ta'amei ha-mitzvot* (rationales for the commandments), which are external to the halakhah itself, thus divesting aggadic elements of any normative, authoritative status.

Why did scholarship take that direction? What factors were at work? I will relate to some of them summarily, and more extensively to those pertaining to the chasm between halakhah and aggadah as it touches upon the subject of our discussion – the creation of humanity in God's image.

2 See, e.g., *m. Ned* 4:3; *Sifre Deuteronomy*, 306, 339; *Mekhilta de-Rabbi Ishmael, Vayasa*, 1(96); see later (end of Section IV).

3 Sussman, "Urbach," 64, 75. In this description, one may discern Sussman's identification with Urbach's approach; cf. Urbach, *The Sages*, 2; Katz, *Halakhah and Kabbalah*, 12; Gruenwald, "Methodology," 173; Frankel, *Ways of Aggadah*, 5; Ginzberg, *Halakhah and Aggadah*, 13–14; Elon, *Jewish Law*, 49.

4 See Urbach, *The Sages*; Urbach, *The World*, 125, 97, and 179.

First, study of the links between halakhah and aggadah in Talmudic literature should be examined within the broader context of the study of Talmudic halakhah, the history of which was summed up in the following manner by Yaakov Sussman:

Study of the history of the halakhah during the Second Temple period and until the closing of the Talmud was one of the major goals of the academic study of Judaism almost since its inception ... But the realization of these hopes was frustrated ... the reality is that this field of research has been almost totally neglected during recent generations, and since the end of the previous century classic Talmudic research has increasingly bastioned itself within the research of the "**halakhic literature**" and virtually ignored study of the **halakhah itself**.[5]

Under these circumstances, it should not surprise us that the relationship between halakhah and aggadah was likewise ignored. Gershom Scholem described the state of research of halakhah in his scathing comments concerning *Wissenschaft des Judentums*. Scholem, who attributed greater importance to phenomenology than to history, wrote: "Entire blocks of problems have been ignored. The halakhah, not as the history of its literature, but as the research of problems, has remained largely outside their sphere of interest. *As a religious* problem it has no importance" (emphasis in the original).[6] Moreover, the paucity of research on the links between halakhah and aggadah is the product of several unique factors, to some of which Scholem alludes; I will deal with some of these below.

1. Historical Background

Like the study of anthropomorphism in Talmudic literature, the study of the connections between halakhah and aggadah is the outcome of trends that originated in the Geonic period. R. Saadyah Gaon apparently coined the dictum that "one does not rely on aggadah,"[7] a rule that was widely regarded – by halakhists, exegetes, and scholars alike – as defining the status of the "non-halakhic" sections of Talmudic literature. R. Hai Gaon, who shared this view, suggested the following rationale:

It should be known that the words of aggadah do not have the status of oral tradition, and each person conjectures as he pleases, employing such terms as "perhaps" and "it could be said," so that the issues are not clearly defined. For that reason we can not rely upon

[5] Sussman, "Urbach," 89 (emphasis in source). For a discussion of this development, see Sussman, "History of the Halakhah," 12–14.

[6] Scholem, *Explications and Implications*, 397; and see Sussman, "Urbach". Scholem's comments further on are also instructive: "Just try to understand anything about it [the Halakhah] from the writings of Zechariah Frankel or Eizik Hirsch Weiss! As a religious problem it was no less mysterious for them than the Kabbalah."

[7] *Otsar Ha-Geonim*, *Berakhot* Commentaries, 91; also: "One does not question [i.e. argue halakhically] based on Aggadah," etc. and similarly in *Otsar Ha-Geonim, Hagigah*, 59–60; see Lieberman, *Sheki'in*, 83.

them. . . . And these *midrashot* are not tradition and not halakhah, but were only stated by way of conjecture.[8]

Due both to its idiosyncratic nature ("each person conjectures as he pleases") and its vagueness ("not clearly defined"), R. Hai views the aggadah as lacking in halakhic authority even for its authors. That which was implied by R. Hai was stated explicitly by Samuel b. Hofni: "Where the words of the early authorities contradict intellectual perception, we are not obliged to accept them."[9] The ("obscure") aggadot are not authoritative because they are not rational. The aggadot referred to here are primarily those that are anthropomorphic. As opposed to R. Hai, Samuel comments indicate that, in the eyes of their authors, these aggadot originally bore authoritative status.[10] Even though the allegoric interpretations of the aggadot were Geonic innovations, they were primarily concerned with halakhah. Protection of rabbinic Judaism from Karaite incursions, on the one hand, and from Islamic theology, on the other, necessitated driving a wedge between halakhah and aggadah – in other words, denying the latter any status as a "binding halakhic source." The particular interpretative mode adopted in relation to aggadah was of secondary importance. The impetus for the allegorical (i.e., rationalistic) interpretation of aggadah originated in its total detachment from halakhah.[11]

For the Geonim, halakhah and aggadah do not belong to the same literary corpus, nor even to the same ideational world. As such, the aggadah should not be seen as providing the "rationales for the commandments" that relate to halakhah from the "outside." Given that aggadah is not considered as authoritative theology, the Geonim attempted to exclude it from their academies. Nonetheless, the comments of the Geonim are not commensurate with the stature of aggadah in early rabbinic literature. The Mishnah freely intertwines halakhah and aggadah, drawing no distinction between the two; the same holds true with respect to *midrashei halakhah* and the Tosefta. The Babylonian Talmud abounds with challenges to the aggadah, while relying upon it in halakhic matters.[12] As such, if the dictum "one does not rely on the aggadah" is descriptive and not only normative-prescriptive, it is inapplicable to Talmudic literature. The Geonic approach was endorsed by a number of medieval scholars, primarily in Spain and North Africa,[13] while the Ashkenazic scholars

[8] *Otsar Ha-Geonim*, *Hagigah*, Commentaries Section 14a; and cf. *supra*, Chapter 2.I.1.

[9] *Otsar Ha-Geonim*, *Hagigah*, 4b; see Sklare, *Samuel ben Hofni*, 39–43.

[10] However, see the particularly sharp comments of R. Samuel b. Hofni in a letter from the year 985, cited by S. Assaf, *The Geonic Period*, 283.

[11] For a discussion of additional factors that lead the Geonim to distinguish between halakhah and aggadah, see Sklare, *Samuel ben Hofni*, 39–43.

[12] R. Hai Gaon was aware of this and was therefore more cautious with respect to the aggadah in the Bavli. See *Sefer Ha-Eshkol*, ed. Albeck, Part 1 (Halberstam, 1935), 158. Despite his more cautious approach, R. Hai Gaon also denied any authority to the aggadah of the Bavli. See Ta-Shma, *Ashkenazic Custom*, 73, n. 100.

[13] See the sources cited by Lieberman, *Sheki'in*, 81–83.

adhered to the Talmudic tradition, viewing aggadah as an authoritative source and as a subject for study and extrapolation.[14]

Following the model of the Geonic approach to rabbinic aggadah, modern scholars have tended to divest the aggadah of any halakhic authority, and in so doing divorced it from the halakhah. Whereas during the Geonic period this position was considered novel, over the course of time it became a natural, almost self-evident distinction. Zunz defines the aggadah as "that which is not *halakhah*"[15]; in discussing the differences between the two, he notes the interpretative "freedom" (or looseness) that characterizes the aggadah. *Halakhah* on the other hand, represents "the strict authority of the law and the *beit midrash*." He further adds:

> But this freedom did not purport to distort Scripture and divest it of its natural meaning, for it only functioned in the elucidation of the abstract idea and played no role in the binding precepts. To the extent that greater flexibility was allowed for the aggadic elucidation of Scripture, so too the flexibility was increasingly restricted to the words of the individual, and as such the aggadah has no binding authority, neither as an interpretative method nor as a regulator of everyday life.[16]

Yonah Frankel noted the similarity between these comments and those of R. Hai Gaon.[17] This approach reverberates, in varying formulations, both expressly and implicitly, in the writings of several modern scholars of Talmudic literature.[18]

2. On the Separation between Aggadah and Halakhah in Jewish Tradition and in Hebrew Culture in Recent Generations

In addition to the above-mentioned halakhic-ideological tradition, which originated with the Geonim, the dearth of research on the connection between

[14] Regarding *pesikah* (determination of the halakhah) on the basis of aggadah, see Grossman, "Sanctification of the Name," 107–108 and his references at n. 21; Katz, *Halakhah and Kabbalah*, 255 ff; Maimonides also relies on aggadic sources in his determination of the Halakhah, e.g., *Iggeret Hashmad*, see Lorberbaum and Shapira, "Epistle on Martyrdom," on the standing of aggadah in this work. Regarding the study of aggadah, see Urbach, *The Tosaphists*, 713–718, where he sums up saying, "their [the Tosafist's] approach to the aggadah and midrash was the same as their approach to halakhah" (ibid., 714). An instructive example of someone torn between halakhah and aggadah is the Maharsha, (Poland sixteenth –sevententh century), whose commentary on the Bavli was divided between *Hiddushei Halakhot* and *Hiddushei Aggadot*. In the introduction to *Hiddushei Halakhot* he writes: "I now question my original decision to divide into two sections . . . for they should not have been separated, but rather attached one to the other." Regarding the Maharsha's novellae on aggadot, in which he also endorsed the allegoric interpretation, see Elbaum, "Interpretation of Aggadah", 135.

[15] Zunz, *Sermons,* Chapter 4.

[16] Ibid., Chapter 19.

[17] Frankel, *Ways of Aggadah*, 546.

[18] See, e.g., Epstein, *Introduction*, 914. This approach is also implied by Lieberman, *Sheki'in*, ibid.; *Hellenism*: Lieberman, 188; Safrai, "Attitude of the Aggadah," 234.

halakhah and aggadah resulted from a number of other factors as well. The dichotomy between halakhah and aggadah finds expression in various areas of Jewish tradition in recent generations, and even in modern Hebrew culture.

In his famous essay "Halakhah and Aggadah," Bialik describes the distinguishing features of the two. The halakhah is "severe, strict, hard as iron" and the aggadah "compliant, merciful, softer than oil." The halakhah is "piety, fossilized, duty and yoke," wearing a "stern face," whereas aggadah is "eternal renewal, freedom, leniency, wearing a joyous face."[19] Nonetheless, according to Bialik, the halakhah and aggadah are "two [phenomena] which are in essence one, two aspects of the same being." Bialik was not referring specifically to Talmudic research, but to the entire community of those shaping the nascent Jewish culture. For Bialik, "halakhah" and "aggadah" were cultural categories representing the concrete and ephemeral as opposed to the abstract and infinite – barren symbolism as opposed to narrow practicality.[20] In his essay, Bialik calls upon Hebrew literature to return to the bedrock of authentic Jewish culture, which dialectically combines these two categories. Bialik's words were subject to criticism from numerous quarters, including such authors as J. H. Brenner and M. J. Berdyczewski, who were adamantly opposed to any manner of inspiration from the exile-burdened Jewish tradition.[21] Contrary to Bialik's intentions, and with the assistance of his opponents, the ensuing polemic only served to intensify the phenomenological differences between halakhah and aggadah. These differences also left their imprint on Talmudic scholars, and further fortified the dichotomous tendency that was already rife in scholarship prior to the controversy.[22]

The study of halakhah, and particularly of the relationship between halakhah and aggadah, was also influenced by the world of traditional Jewish learning. In the world of yeshivot, and especially those of the Lithuanian type – in central and Eastern Europe, in the past, and in Israel and the United States, in recent generations – an almost categorical distinction was drawn between *lamdanut* (traditional casuistic study), focused exclusively on halakhic matters, and *aggadeta* (i.e., aggadah, primarily of the Babylonian Talmud), which is not included in the classical yeshiva curriculum.[23] As is well known, these circles inclined to formalistic-conceptualistic study, and among certain schools this tendency had its own, quasi-systematic

[19] Bialik, "Halakhah and Aggadah," 55.

[20] In the wording of Kagan, *Halakhah and Aggadah*, 11.

[21] Ibid., 98–99, and see references in nn. 8–10.

[22] See, e.g., Frankel, *Ways of Aggadah*, 652, n. 30 and 481 onwards; Kagan, *Halakhah and Aggadah*, 111 onwards; but cf. Ginzberg, *Halakhah and Aggadah*, 13–14.

[23] Study of these circles has been woefully neglected. To date, see Katz's observations in the chapter on "Halakhah and Kabbalah as Competing Subjects of Study" in his book *Halakhah and Kabbalah*, 97 ff.

terminology.[24] Significantly, many leading academic scholars of Talmudic literature spent their formative years in these circles.[25]

The study of halakhah was also influenced by two important Jewish thinkers of the last generation, Joseph B. Soloveitchik and Yeshayahu Leibowitz, each of whom believed, in their own fashion, that the halakhah is essentially formalistic. Soloveitchik's characterization of the halakhah combines the Talmudic conceptualism of Rabbi Chaim Soloveitchik of Brisk[26] with Kantian epistemological formalism. Soloveitchik viewed halakhah as a quasi-mathematic discipline, invoking terms such as "a priori" and "ideal." "The halakhah," he writes, "is based on a comprehensive deductive system"; "the halakhah has its own methodology, a logical analytical method, and its own conceptual thinking."[27] Yeshayahu Leibowitz, on the other hand, was motivated by the desire to safeguard Jewish tradition from what he perceived as "idolatry." The antithesis to this is "service of God," which he defines as "worship for its own sake" (*avodah lishmah*). According to Leibowitz, "service of God" means unconditional obedience to God, the sole expression of which is complete submission to the precepts of the halakhah. In his portrayal of halakhah as "worship of God for its own sake," Leibowitz expunges it of any trace of ethical, utilitarian, spiritual, or even metaphysical content, thereby transforming it into a purely formal system. Anyone abiding by its dictates thereby assures the disinterested nature of his religious worship. "The halakhah is its own basis and foundation," he writes, "and its evolution over the generations reflects the factors that are immanent to its self-perception."[28] One may safely assert that the approaches of these circles embody their *zeitgeist* in relation to halakhah. One cannot dismiss the possibility that the strict formalism which they attributed to it similarly permeates academic research, especially in the area of the relation between halakhah and aggadah.

Scholars have noted the exceptional sensitivity of "traditional Orthodox Jews" to academic study of the halakhah, as a result of which, already during

[24] *Hillukim* – that is, classification of commandments in terms of *heftza* and *gavra*, and so on. In this context I will also mention *pilpul* (dialectic casuistry), a formalistic method of analysis, different versions of which were widespread in the yeshivot. For its history, see bibliography cited by Reiner, "Changes," nn. 3, 6. Regarding the terminology that served Ashkenazic *pilpul* until the eighteenth century, see Dimitrovsky, "Pilpul."

[25] See Schäfer, "State of Research," 139–140, who refers to the research method of S. Lieberman and Y. N. Epstein as "halakhic-traditional." He refers to these scholars' approach to halakhah as "systematic–theological" (ibid., 140). See Milikowsky, "Response to Schäfer," 201, n. 2. Regarding the synthesis between "criticism" and "tradition" in Lieberman's work, see Dimitrovsky, *From Exegesis to Research*, 34–49.

[26] See Soloveitchik, *Halakhic Man*; and Soloveitchik," *Mah Dodeikh Midod*," in *Divrei Hagut ve-Ha'arakhah* Jerusalem, 1984.

[27] See Sagi, "Soloveitchik and Leibowitz," 136–137, and see the references to their writings, ibid., nn. 31–34.

[28] Leibowitz, *Faith, History, and Values*, 136–137. For more moderate formulations and analysis of this concept, see Sagi, "Soloveitchik and Leibowitz,", 137 ff.

the *Wissenschaft* period, many of them "sought refuge in the study of halakhic literature rather than that of the halakhah itself."[29] Orthodoxy (then, as today) is primarily concerned with the damage wrought by research to the "transcendental, a-historical nature of the halakhah." Even greater sensitivity may emerge with respect to historical research of the relations between halakhah and aggadah, the interaction of which may present the halakhah as an irrational, even mythic system. As Jacob Katz surmised, this kind of research may reveal that "originally [in tannaitic sources], the provisions of the halakhah and their irrational foundation are inseparably interwoven, to the extent that the halakhah may be regarded as a practical, ritualistic manifestation of the very same conception that found its verbal formulation in the aggadah."[30] Katz's comments bring us to the next point, which is of crucial importance for our purposes.

3. Rabbinic Judaism as a Legalistic Religion

The approaches described above attest to scholarship's prevalent perception of a fundamental antagonism between Judaism and myth, thereby giving rise to another factor which has decisively influenced the study of halakhah. Over 70 years ago G. F. Moore described the attitude of Christian authors toward Judaism, from the nineteenth century until his own time.[31] These authors made no effort to conceal their own ideological motives, deriving directly from Pauline-Protestant theology. Their approach is succinctly expressed in the following comments of their most important spokesman, Ferdinand Weber:

> From this fundamental conception of God as the absolute, Jewish theology deduces two further (in reality antithetic) elements, which must be regarded as characteristic of the Jewish idea of God: namely, abstract monotheism and abstract transcendenticism [Weber] ... It is equally important to remark [continues Moore] that "the fundamental conception of an inaccessible God [...] is derived [in Judaism] from the principle that legalism is the essence of religion, from which, according to Weber, it follows by logical necessity [...] Legalism is the sum total and the essence of religion, and in the Jewish conception – the exclusive form of religion anytime, everywhere.[32]

These scholars also held to a very particular assessment of the Sages' view of the status of aggadah and midrash (and the Jewish tradition that evolved therefrom). In the words of Moore:

[29] In the words of Sussman, "Urbach," 92.
[30] Katz, *Halakhah and Kabbalah*, 12.
[31] Moore, "Christian Writers."
[32] Ibid., 229–230. Moore's quotation here is from Weber's essay *Altsynagogalische Palastinensische Theologie*, first published in Leipzig, 1880 (the additions in the square brackets are mine –Y. L.). Regarding this essay, see Sussman, "Urbach," 68, n. 127.

To much of this material – to the exegetical ingenuities and homiletical conceits of the Midrash and the playful imaginations of the haggadah, for example – the Jews attached no theological character or authority.[33]

Weber's perception of Judaism's essence established both the framework and principles for many scholars of the Jewish religion (both Christian and Jewish) who followed him, particularly those who specialized in the study of Talmudic literature.[34]

As stated, many Jewish scholars also endorsed these views.[35] But, unlike the Christians, there were those who looked favorably upon the phenomenon; some of their reasons and motivations have been mentioned above. In the previous chapter I elaborated upon the similar approach they adopted toward the aggadah. A prominent exemplar of this approach is Gershom Scholem. Relating to the anti-mythical nature of rabbinical monotheism (from which we quoted in the previous chapter),[36] Scholem adds the following remarks about the halakhah:

For what, in Rabbinical Judaism, separated the Law from myth? The answer is clear: the disassociation of the Law from cosmic events. [...] it is no longer in any sense regarded as the representation of a mythical event in cult. [...] And nothing perhaps characterizes this separation of an almost self-subsisting Law from its emotional roots than a little Talmudic anecdote that is frequently cited in Rabbinical literature [...] Let speculative philosophy concern itself with the reasons for laws; to the Rabbinical mind the question was irrelevant or at most took on a certain significance in eschatological perspectives. And this divorce of the Law from its emotional roots is one of the great and fundamental, but also dangerous and ambivalent, achievements of the halakhah, of normative Rabbinical Judaism.[37]

Scholem's comments are premised on Eliade's conception of myth and ritual. Insofar as rabbinic halakhah (and aggadah) does not, in his view, "conform" to this conception,[38] the necessary conclusion is that it is detached from any mythical foundation.[39] For Scholem, not only is the halakhah intrinsically

[33] Moore, "Christian Writers," 232.

[34] See, e.g., Davies, *Paul and Rabbinic Judaism*, 53. A similar approach is taken by Goodenough, in his book *Jewish Symbols in the Greco-Roman Period*. Goodenough describes rabbinical Judaism as a religion that eschews mysticism and spirituality, being exclusively concerned with obedience to the arid law. Goodenough contrasts this to the popular Jewish religion, which draws its vitality from the surrounding pagan environment. See M. Smith in *JBL* 86 (1967), 53–68, esp. 62–63.

[35] Moore, "Christian Writers," 226; see Urbach, *The Sages*, 7, emphasizing Weber's influence and his tendency "to underscore the legalistic character of Judaism"; and see Sussman, "Urbach," 87.

[36] See Chapter 2.II.6

[37] Scholem, *Kabbalah and Myth*, 94–95. Further on he writes: "The world from which they came, the strict monotheism of the Law, of the Halakhah, the ancient Judaism in which they knew themselves to be rooted, could not readily accept this eruption of the myth at its very center" (Ibid., 98).

[38] See Idel, "Time and History"; Idel, "Rabbinism vs. Kabbalism."

[39] A similar approach is found in Buber, "The Jewish Myth" 1: 83.

non-mythical; it is also indifferent to the rationales for the commandments (*ta'amei ha-mitzvot*). Even if the aggadah may provide such reasons, these cannot be regarded as constituting the foundation of the halakhah.[40] This distinction is the foremost achievement of rabbinic Judaism. Scholem's characterization of the halakhah as legalistic, as "self-subsisting," and as divested of any "emotional roots,"[41] reflects the state of research regarding halakhah, at least until recently.[42]

4. The Study of Halakhah and Legal Formalism

The study of halakhah and, especially, of its relationship to aggadah, was also influenced by a rigid jurisprudential approach to the halakhah, inspired by the formalistic conception that prevailed in jurisprudence (particularly in the English tradition) during the first half of the twentieth century.[43] According to this approach, legal systems are closed systems, consisting of "legal rules" governed by "legal reasoning" (or "legal logic"). In other words: the legal rules are all logically related to one another, and their application is deductively based. According to this conception, law is a form of mathematics, in which conclusions flow from primary assumptions by means of rigid logical deductions. "Logic" of this kind, when applied to the rules of the law, enables the legal system, much like mathematics or geometry, to be self-sustaining. Both of these assumptions – the basing of the law on fixed, closed rules, and the logical-deductive nature of legal reasoning – engendered the illusion of the mathematical essence of the law. This jurisprudential approach is known as "legalism" or "legal formalism."

The term "legalism" usually indicates the technical application of rules to specific cases without taking into consideration additional aspects of the law, on the assumption that the law consists exclusively of what is formulated on the level of its rules."[44] Theoreticians provided a similar characterization of legal formalism.[45] By contrast, in an anti-legalistic, anti-formalistic approach, "the Law" does not consist exclusively of conceptual analysis of the particular terms it deals with, nor of the deductive application of its fixed rules in relevant cases.

40 For a more moderate version of this view, see Urbach, *The Sages*, 388.

41 This approach is directly related to Scholem's view of the chasm between "rabbinic Judaism" – representing "established and conservative" religious authority – and mysticism, which is essentially "revolutionary." See Scholem, *On the Kabbalah and Its Symbolism*, 9 ff.

42 Compare with Scholem's statements in *Explications and Implications*, 397–398, cited above.

43 See, e.g., Roth, *The Halakhic Process*, which relies primarily on the positivistic jurisprudential model proposed in Salmond's *Jurisprudence* (London 1907). Prior to becoming narrowed down to the research of halakhic literature, the research of the halakhah in the nineteenth century was influenced by F. K. Savigny's school of German jurisprudence; See Harris, *How Do We Know This*, 193.

44 e.g., Shklar, *Legalism*, 1.

45 Weinrib, "Formalism," 962, 964–965; and cf. Shauer, "Formalism."

Such an approach invests the law with far more than what is included in the superficial language of its rules. It comprises, *inter alia*, reasons, principles, policies, values, and world-views. All of these constitute its foundation, or are complementary to it, as an integral part of the law itself.[46] As such, the application of the law in particular cases is neither mechanical nor deductive, but also (or even primarily) requires discretion of a different nature.

Most of the approaches and studies dealt with earlier, as well as those to be discussed later, identify the halakhah either explicitly or implicitly with legalistic jurisprudence. This view has two drawbacks: First, it is questionable whether rigid "deductive" legalism is an appropriate characterization of any legal system. I will attempt to demonstrate below that this characterization is certainly not consonant with the nature of tannaitic halakhah. Second, it is impossible to speak of a uniform legal theory of halakhah. Even if we were convinced that legalism accurately describes the approach of a particular halakhic work, authority, or even of a particular period, it does not follow that it typifies the phenomenon of "halakhah" *per se*. Halakhic traditions are varied and distinct from one another, not only in terms of their halakhic details, but also in terms of their jurisprudential foundation, which may indeed be the main distinguishing factor between them. Hence, the jurisprudence reflected in Maimonides *Mishneh Torah* and *Sefer Ha-Mitzvot* differs from that which infused the halakhah of Franco-Germany in the eleventh and twelfth centuries, and both of them differ from the jurisprudence of the Mishnah or the Talmud.[47]

It would be more accurate to refer to a variety of philosophies (or specific legal theories) of halakhah, expressed in a range of works and periods at different times and places. Both flexibility and sensitivity are required to determine the relevant jurisprudential conceptions of the halakhah during its different periods; these concepts are ultimately derived from the halakhic sources themselves. I do not claim that the halakhah is without certain salient general features, but it is by no means self-evident that a characterization of the halakhah appropriate for a particular time and place will be suitable for another.[48]

For example, tannaitic halakhah can be distinguished from halakhah at its later stages of development.[49] The former was a formative period during which it was difficult to distinguish between theosophy-theology and law, particularly in the context of a normative system that, together with its creation of legal rules, also created countless ritualistic-religious precepts. Indeed, given the context of early rabbinic halakhah, it is difficult to understand the prevalent claim in

46 Jackson, "Legalism and Spirituality," 259.

47 For the distinction between the sectarian-Sadducean conception of the law and rabbinical conception of the law, see Schwartz, "Law and Truth." For discussions of the Maimonidean conception of the law, see Levinger, *Ways of Thought*; Twersky, *Introduction to the Mishneh Torah*, 39; Halbertal, "*Sefer Ha-Mitzvot* of Maimonides"; Lorberbaum and Shapira, "Epistle on Martyrdom." On Ashkenazic Halakhah, see Ta-Shma, *Ashkenazic Custom*, 35 ff.

48 England, "Study of Jewish Law," 55–56.

49 Katz, *Halakhah and Kabbalah*, 12.

modern scholarship that the halakhah is a self-sustaining system. Unless one assumes a linkage between halakhah and aggadah, it is difficult to fathom what animates and sustains the Sages, who both created and refashioned many of these halakhot. These comments are especially true of R. Akiva and his school, who are renowned for their innovations in both halakhah and aggadah.[50]

5. Between Man and God – Between Man and Man

One branch of research that tended to adopt jurisprudential concepts was *Mishpat 'Ivri*, the study of Jewish Law as such.[51] In striving to adapt (and apply) the halakhah to the modern world, this branch of research discerned these jurisprudential categories in the halakhah and described them accordingly. The problem in this realm, at last as depicted by some of its foremost scholars, is already evident in its name – *Mishpat 'Ivri* (Jewish *Law*) – which indicates its tendency to isolate *mishpat*, "law," from the totality of the halakhah, and laws governing relations among people from laws between man and God.[52] This tendency likewise tends to separate the religious element, including aggadah, from "Jewish Law." This point of departure of the *Mishpat 'Ivri* school, whose ideological goals are explicitly declared by its most prominent spokesman,[53] was sharply criticized by Yitzhak Englard:

> In our view there is no scientific justification for narrowing legal research to those particular areas of the halakhah which have their parallels in other legal systems or to those that can potentially be incorporated into the law of the State. All of the normative material of the halakhah is deserving of academic research within the framework of an integrated field of research. Not only can one not ignore the religious foundation of the halakhah: it must in fact serve as one of the primary focuses of its research.[54]

I will further attempt to show that, regarding the subject of "Image of God," civil-social law is inextricably bound up and intertwined with religious law and aggadah, and that this connection is expressed *inter alia* in procedural and substantive criminal law as well as in some of the laws of assault, the laws of procreation, and the laws of divorce deriving therefrom.

[50] At more advanced stages, halakhah and aggadah are liable to be separate, each having its own exclusive definition and parameters, operating in accordance with its own internal rules, but this process is not inevitable, and does not reflect the entire halakhic complex in all its derivations (see above, n. 19). See the debate between Ta-Shma and Katz, "Dispute," see also Sussman, "Urbach," 227.

[51] The jurisprudential path taken by scholars in this field is not uniform. For a survey of the research, see Englard, "Study of Jewish Law," 47.

[52] See Gulack, *Foundations*, vol. 1, 6 onwards; Elon, *Jewish Law*, 1, 163 onwards; but cf. at 168. Regarding these two works, see Englard, "Study of Jewish Law," 47 ff.

[53] See Elon, *Jewish Law*, 154–158; Englard, "Study of Jewish Law," 55.

[54] Englard, ibid., 37; and cf. ibid., 64.

The relationship between aggadah and halakhah has been in a state of perpetual flux from the tannaitic period until our own times. Hence, the above comments do not purport to exhaust the maze of connections and conflicts ascribed to halakhah and aggadah in different periods and places, nor do they exhaust the factors that separate halakhah from aggadah and their relative weight. However, within this maze a clear pattern is nonetheless discernible. The process leading to the separation of the aggadah from the halakhah during the Geonic period is clearly related to modern scholarship's approach to halakhah, particularly as it relates to aggadah. Over the generations, and particularly during the twentieth century, this approach was supplemented by other factors, which further deepened the chasm between halakhah and aggadah and caused the halakhah to be understood exclusively in terms of legal, formalistic categories. The use of a legalistic model in the study of halakhah is not motivated exclusively by the presumption that formalism provides the basis for an ideal jurisprudential model. The use of this model also facilitates the severance of the halakhah from the aggadah and particularly from its non-rational, mythical aspects. The formalistic model thus provides an ideal shelter for any rationalist who holds the halakhah dear. According to this approach, which classifies the halakhah and the aggadah as two distinct literary genres, it is pure folly to regard them as a "unified literary corpus."

There were a few scholars, however, who adopted a different path; Yitzhak Baer studied the connection of halakhah to aggadah in a number of his books, and referred to it in others. His approach was unique in the study of Talmudic halakhah: just as he emphasized the mythic elements of the aggadah itself, Baer also tended to emphasize the mythic elements of the halakhah,[55] while criticizing the "Protestant approach." The last few years have been marked by a change in the research of the relation between halakhah and aggadah within Talmudic literature. Based on their analysis of a number of halakhic subjects, and liberating themselves from the assumptions described above, a number of scholars have discovered close links between halakhah and aggadah: Israel Knohl regarding a number of the laws pertaining to the recital of the *Shema'*, Shlomo Naeh in the laws of prayer, Aharon Shemesh regarding the laws of flagellation, and Moshe Halbertal on a number of topics, including judicial execution. All of these demonstrated that "aggadic principles" form the basis of these bodies of law and their details,[56] and all of these works discussed the halakhah and aggadah as one literary genre, emphasizing the religious foundation of the halakhot.

[55] See Baer, "Sacrificial Ritual," and his general observations in his book *Israel among the Nations*, 99–113, esp. p. 103; cf. Idel, *Kabbalah*, 13. In this context, attention should also be given to the work of Aptowitzer, "Observations," esp. at 55; and Bar-Ilan, "Myth and Ritual."

[56] Israel Knohl, "Kingdom of Heaven"; Shlomo Naeh, "Fruit of the Lips"; Aharon Shemesh, "Punishment of Flaggelation"; Halbertal, *Revolutions* (Chapter 7). Cf. Segal, "Criminal Law"; Segal, "Liability."

II. IMAGO DEI IN HALAKHAH – A SURVEY OF THE RESEARCH

The conception of Imago Dei in Talmudic halakhah has only been sporadically discussed in research literature. Closer examination of scholarly discussion of the conception provides an instructive example of the state of research in halakhah and aggadah in general. Let us turn to Alexander Altmann:

> Thus the Mishnah endorsed the concept of "Image of God" in the Philonic sense and ultimately in the Platonic sense, except that rather than deal with its theological implications it gave it practical application. It was intended to constitute a reminder of the dignity and unique worth of every individual [. . .] It is clear that the Sages attributed paramount importance to the possibility of translating the concept of "Image of God" into a halakhic category, and to formulate it in pragmatic terms more than in theological terms.[57]

Altmann interprets the aggadot dealing with the idea of Imago Dei in terms of Philo's metaphysics and adds: "However, in early Jewish tradition, this tendency [the Philonic interpretation of the *zelem* concept], though prevalent aggadah, cannot be said to have been ascribed theological, and all the more so halakhic, significance."[58]

Altmann's comments are based upon the implicit endorsement of the presumptions referred to above: (a) that the laws based upon the conception of Imago Dei have no theological basis, and are limited to ethical matters; (b) the midrashic *aggadot* – at least those dealing with the creation of man in the divine image – do not constitute substantive theology; (c) there is a chasm between the halakhah and the aggadah: the idea of Imago Dei has one meaning in Talmudic halakhah while its aggadic extrapolation is entirely different; (d) the halakhah must be viewed from a legalistic perspective (this flows from Altmann's distinction between "halakhic categories" and theology).

A slightly different approach is taken by Alon Goshen-Gottstein, who identifies two different myths of man's creation in the divine image in Talmudic literature. One myth viewed the image of God as a body of light: once man sinned, his light was dimmed and the *zelem* was removed from him, so that thereafter it was no longer possible to speak of man being created in the image. In contrast with this myth, tannaitic tradition recognizes another myth, in which the image – in its physical sense – has remained intact ever since the creation of man. Unlike the first myth, which lacks any halakhic implications, the second myth is clearly connected to the halakhah. According to Goshen-Gottstein, the Sages accorded it an exclusively didactic role. Nevertheless, notwithstanding its ingrained potential, its halakhic applications were limited. Goshen-Gottstein asserts that this stemmed from the Sages' tendency to particularism that focused on the Jewish people. It was this perception that induced the Sages to limit the

[57] Altmann, "Imago Dei", 15.
[58] Ibid., 18 (in his view, this idea only attained foundational status in the Middle Ages).

scope of the conception of the universal divine image, both in halakhah and in aggadah.[59] It will already be clear from my introductory comments, and from those below, that my own conclusions are radically different.

A few remarks about Imago Dei in halakhah may be found in Yaakov Blidstein's study of the role played by the concept of human dignity in halakhah. He writes as follows:

> There can be no doubt that entire halakhic institutions were intended to buttress the dignity of man, who was created in the Image. I refer to numerous and basic passages in criminal law, personal status and society in general. It is understood that we do not regard this topic as one of meager dimensions, of limited impact [. . .] However, our concern here is not with all of the rules that reflect and give effect to human dignity, for even if human dignity forms their foundation, it is not a recognized and defined concept. More important, it does not operate as a normative category in the halakhic discourse in these matters.[60]

Blidstein too sees the idea of Imago Dei in exclusively ethical-moral terms. I cite his comments because they imply a principled methodology in the study of halakhah. The study of halakhah, in his view, must focus on "normative categories," to which he gives a rather restricted definition. For example, the concept of "human dignity" will be regarded as a normative category only to the extent that it is a "recognized and defined concept in the halakhic discourse," and only in that capacity does it warrant examination in the framework of halakhic research. Evidently, Blidstein means that only a concept with a defined name, and one utilized with its fixed name, is relevant to halakhic discourse. Let us imagine the following situation: in a particular complex of halakhic issues, all with a distinct substantive connection, there are a number of conceptions, all of which reflect the same defined and integrated conception. While it would seem that the same idea is at the basis of all of the halakhic configurations, the fact that it does not appear as a "recognized and defined idea," according to Blidstein, would preclude it being deemed as a "halakhic category" for purposes of inclusion in the halakhah. This formalistic approach is also reflected in Blidstein's attitude to the normative status of the dictum, "Great is the [principle of] human dignity, for it overrides a negative precept (*lo ta'aseh*) of the Torah" (*b. Berakhot* 19b). This halakhic passage is in contrast to Rav's rule that "One who finds mixed fibers (*kilayim*) in his clothing must remove off, even in public." Addressing this difficulty, Blidstein observes that "the message of our passage ('Great is . . . ") belongs to the realm of aggadah; even though this aggadah relies on the halakhah, it is not intended to function as a halakhic rule operative in normative discourse."[61] It may be that this statement did not originate in the context of halakhic discussion, but it is an explicit expression, and not merely an interpretative reconstruction, of a principle underlying a number of halakhot; as

[59] Goshen-Gottstein, "The Body as Image," 13–14, and 18, who on this point follows Jervell, *Imago Dei*. For a critique on Jervell, see Smith, "The Shape of God."

[60] Blidstein, "Human Dignity," 128.

[61] Ibid., 131.

such, nothing prevents its inclusion in the halakhah itself. Indeed, the dictum is utilized by the Talmud in the normative halakhic discourse and even has halakhic ramifications, as demonstrated by Blidstein.[62]

In my opinion, rigid definitions of halakhic concepts should be avoided and greater sensitivity is required for an evaluation of what is relevant to halakhic literature, especially when speaking of tannaitic law.[63] As I will attempt to show below, the idea of man's creation in the Divine Image is a primary constitutive concept within an extensive network of halakhic rules, even if not referred to explicitly in that capacity – that is, even without satisfying the condition of being a "recognized and known conception" or a "normative category" in the narrow sense attributed to it by Blidstein and other scholars.[64] In the following section I will attempt to offer an alternative jurisprudential model, one that is more flexible and will liberate us from the conceptual-legal strait jacket that has been operative in scholarly literature.

III. LEGAL PRINCIPLES AND HALAKHIC PRINCIPLES

Support for the liberation of halakhic research from the bounds of legalism and formalism may be found in the discussion conducted in recent decades in the fields of legal theory and philosophy of law. During the early 1960s, various thinkers began to extricate themselves from the rigid definitions of legal categories, while at the same time criticizing their predecessors. A renewed examination of the basic concepts of jurisprudence engendered the development of new and fresh conceptual tools for the understanding of legal systems. These tools coalesced into an alternative, more open and flexible jurisprudential model, which may be suitable for the study of Talmudic halakhah in general, and for that of the relationship between aggadah and halakhah in particular. This model enables us to explain the flexibility of legal systems with respect to reasons, principles, policies, values, and world-views. It should be noted that these models are the product of a survey of modern legal systems, primarily the Anglo-American ones, whose components are not necessarily commensurate with Talmudic halakhah. These models will, therefore, only serve us heuristically. Despite its unique breadth, substantive foundations, and other features, from the conceptual perspective to be discussed later the halakhah may be classified as a legal system.[65]

1. Rules and Principles

One of the methods used for examining the relation between aggadah, philosophy, ethics, myths, and the like, on the one hand, and statutes and laws, on the

[62] Ibid., 136.
[63] See Katz, *Halakhah and Kabbalah*, p. 12.
[64] This approach is exemplified by Knohl; see "Kingdom of Heaven", 24–25.
[65] See Goldman, "Morality, Religion, and Halakhah."

other, is the concept of the "legal principle," or its halakhic counterpart, the halakhic principle. Over recent decades the attention of many scholars of legal theory and the philosophy of law has been occupied by legal principles, which have come to be recognized as one of the keys to understanding the manner in which legal systems operate.[66]

A distinction is generally drawn between a "legal principle" and a "legal rule."[67] The latter generally refers to a specific section of a statute or ruling (or, in a binding judgment, a precedent) which provides a solution to a particular legal problem. Legal principles are those general values that do not as such govern any particular case, but rather establish abstract values that inform and guide the solution of specific kinds of cases. An example of a legal rule is that article of the statute prescribing that a person convicted under the Israeli enactment to bring to justice the Nazis and their collaborators is subject to the death penalty. An example of a legal principle is the principle of the sanctity of life, which guided the legislator in refraining from imposing the death penalty upon other offences in the Penal Code, and the court – to limit its application in the cases it adjudicates. This principle may also induce the legislature to enact laws intended for the preservation of human life, such as "the Good Samaritan Law" (the law imposing an obligation to save a person whose life is in danger). An example of a halakhic principle is "'and you shall love your neighbor as thyself' – select an easy death for him,"[68] which guides the early Rabbis in their formulation of rules relating to the methods for executing those sentenced to death.

Legal principles, like halakhic principles, may be abstract to a greater or lesser degree. The same applies to legal rules, making it impossible to draw a sharp distinction between them. For example, R. Akiva's dictum, "'And you shall love your neighbor as yourself' – this is a great principle of the Torah" (*y. Ned* 9.4),[69] conveys not only an ethical principle, but also a legal one, which is more abstract than that referred to above. There is a continuum among the different levels of generality of any particular set of rules, or of any particular set of principles. A similar continuum exists with regard to the levels of generality of the rules of the law and its principles, but characteristically a distinction may be made among them.

Legal systems consist of a large range of concomitant legal principles, which may on occasion be in conflict. In such cases, priority is given to the legal principle commanding the greater weight. Thus, for example, two principles may be discerned within the rabbinic law of judicial execution: one – the desire

66 There is a vast literature on this subject. I will mention those books that laid the foundations for ensuing discussion: Hart, *Concept of Law*; Dworkin, *Rights*, Chapters 2, 3, p. 46, n. 2 in which he refers to additional bibliography; Raz, "Legal Principles"; Raz, "Principles."

67 Regarding the distinction between *rules* and *principles*, see Dworkin, *Rights*, 22–31; and see the critique of Raz, "Legal Principles," 635–639.

68 *t. San* 9.11 (429–430); *b. San* 45a, and elsewhere.

69 See also *Sifra, Kedoshim*, 4.12 (89b); *Avot de-Rabbi Nathan*, (Version B, 26; p. 53) and additional parallel sources.

to avoid mutilating the convicted person's body during the execution process; the other – the desire to minimize suffering during the execution. Both of these principles may be combined in the formulation of the laws governing a particular mode of execution, whereas in other cases they may be in conflict, in which case the controlling principle will be that to which the Sages ascribe greater weight. The fact that a particular principle was not decisive in a particular case does not invalidate it or disqualify it for purposes of the system as a whole. The most that can be said is that in a particular case it was accorded less weight than that accorded to the other, competing principle; it may nevertheless still be decisive in numerous other cases. The centrality of a principle in any legal system is determined by the degree to which it shapes the rules of the particular legal framework to which it applies, and its degree of priority over other principles.[70]

Like legal rules, legal principles pervade all of the law's sources: statutory law, case law, custom, etc. Principles may be inferred from a series of legal rules or originate independent of them. Accepted morality, ideal morality, social and political ideologies, theological viewpoints, and myths may all serve as sources for legal principles. It, therefore, follows that the boundaries of a legal system are not well defined and are far more fluid than would seem at first glance.[71]

2. Legal Principles and the Law as a System

Legal principles are of critical importance in structuring a collection of laws into a system. In their absence, the legal system would be no more than a collection of rules, placed alongside one another but lacking any unifying organizing structure. Such a description does not do justice to the character of the law as a system, and consequently misrepresents the meaning and function of its particular rules.[72] Any rule – or, for our purposes, any halakhah – may be fully understood only within the context of its connection to the system as a whole, or at least to the particular halakhic area to which it belongs. In speaking of this connection, I refer to the concepts, principles, and fundamental values inhering in all of the details of the halakhah. In the words of Moshe Greenberg:

> It is impossible to understand the legal system of any society absent knowledge of its fundamental concepts or system of values. To date, most comparative research of Biblical Jewish law and laws of the Near East has sufficed with the comparison of isolated rules, without touching upon the system as a whole and its basic conceptions. But until we understand the values embedded in the laws, it is doubtful whether we can properly

[70] Raz, "Legal Principles," 837; Dworkin, *Rights*, Chapter 4.

[71] This proposition is the source of a dispute between Dworkin and Raz. See Raz, "Legal Principles," 848–849, and the references cited; Dworkin, *Rights*. The position depicted above is closer to that of Dworkin.

[72] See Raz, *Concept*, Raz, *Authority of Law*, 78–121.

evaluate any particular rule, and all the more so compare it in a beneficial and constructive manner with another law in a foreign system.[73]

These comments focused on the study of Biblical law, but are equally apposite for purposes of post-Biblical halakhah. For example, the meaning of each of the four mishnaic modes of judicial execution, or of any detail thereof, derives from the principles governing the modes of execution as a whole. Indeed, we will find that they also derive from the principles shaping the entire edifice of criminal procedure in tannaitic halakhah. This does not negate the value of those studies that focus upon a particular halakhic rule without attempting to fathom the underlying structural principles that transform them from a random collection of rules into a halakhic system. Studies of this kind may contribute significantly to an understanding of the genealogy of the law, or what theoreticians refer to as its "diachronistic aspect."[74] Nonetheless, with all their importance, these explanations are usually fragmentary, because they fail to explain the law within the context of its internal conceptions.

On the other hand, one must avoid an overly sophisticated presentation of the law, making it appear excessively systematic.[75] Every legal system has contradictions that cannot be reconciled, and the halakhic system is no exception. Contradictions may be indicative of ideational, ideological, and societal tensions endemic to all societies, including its legal system. They may also be the result of pragmatic considerations, which occasionally impede the uniform application and integration of principles, or interfere with the process of striking a balance among legal rules. These remarks are of particular importance in historical research intended to reconstruct an ancient system, and predominantly of its principles, which are generally implied rather than explicit. However, acknowledgement of the existence of contradictions in legal systems only attests to the fact that they are imperfect; contradictions do not diminish the centrality of principles in any system of law, including the halakhah.

3. Legal Principles and Interpretation

This last point underscores the importance of principles as interpretive tools. The second half of the twentieth century witnessed the intensified study of hermeneutics, and with it an increased awareness of the complexity of the interpretive act. The field of law was no exception and, as with literature and history, it became clear regarding law as well that interpretation was not just a technical performance. In many cases, the application of a principle to a particular case cannot be reduced to a simple deductive calculation. The interpretive process involves complex considerations relating to the precise meaning of the rule, the expressions it employs, its relevance to the particular case being discussed, and

73 Greenberg, "Criminal Law," 16; and see Hoeble, *The Law*, 3–46.

74 Englard, "Study of Jewish Law," 40.

75 Ibid., 43.

the relevance of other rules. Legal principles play a central role in the resolution of these questions because they create a context for determining the contents of the rules and the manner of their application in particular cases.

The interpretive process is reasonably complex with respect to an operative system of law, but when dealing with legal systems from the past it becomes even more intricate. In a living and functioning legal system the interpreter is a part of society and, in addition to the written law, he has access to other "sources" of law. Such is not the case regarding legal systems from the past, in which a large part of what comprises the "unwritten" sources of law are not available, at least not in the "official" legal material. The interpreter is thus called upon to utilize all the material at his disposal for purposes of their reconstruction. Literary and historical material, which at first sight seem foreign to the legal system, may be particularly significant in this act of reconstruction.

To sum up: according to the jurisprudential model proposed here, a legal system cannot be defined exclusively in terms of its rules. It also includes principles, which cannot be viewed as extra-legal norms or as abstract philosophical constructs that relate to the legal system from without,[76] but rather as an integral part of the system itself. These principles are intrinsic both to the construction of the law as a system and to the interpretation of its rules. Its sources are diverse, a fact that tends to blur the boundaries of the law and undermine its aspiration to stability and certainty. Nonetheless, a model that integrates the principles into the system provides a theoretical underpinning for productive research of early rabbinic halakhah and helps to illuminate its interrelation with the aggadah.

4. Halakhic Principles and Aggadah

As noted above, aggadah is generally defined as the non-halakhic (i.e., non-legal)[77] part of Talmudic literature. This definition is adequate to the extent that it differentiates the aggadah from the "halakhic rules"; in other words, from the specific, discrete halakhot. But, as we observed, in scholarly literature the expression "non-halakhic" has a broader connotation: aggadah is considered "non-halakhic" in the sense that it is devoid of halakhic principles, models, and basic concepts; in other words, it lacks halakhic status. According to a more moderate formulation of this line of thought, the aggadah – particularly with regard to its less "obscure," more "rational" parts, and its ethical themes – indeed belongs to the ideational world of the halakhah, but only in the sense of providing a rationale for the commandments; on other words, as thought structures that interpret the halakhah from outside. Yet from a halakhic point of view, the aggadah (as a whole) is invalid. These approaches are the result of an evaluation of the halakhah by way of a formalistic model, which separates the

[76] Raz, "Legal Principles," 883; Dworkin, *Rights*, Chapter 1.

[77] See, e.g., Saperstein, *Decoding the Rabbis*, 213, n. 1.

aggadah from halakhic discourse. I noted earlier that this result is incongruous in light of the manner in which aggadah is integrated into Talmudic halakhah.

As noted, a number of scholars have recently drawn attention to meaningful connections between various aggadic and halakhic passages in the Mishnah. As against the prevailing scholarly view, Shlomo Naeh showed how the story of R. Hanina b. Dosa in *Mishnah Berakhot* (5:5) is a model for the formulation of a number of the laws of prayer in that tractate.[78] Israel Knohl has explained how halakhic disputes between the School of Hillel and the School of Shammai concerning the laws of reciting the *Shema* may be understood in light of aggadic sources pertaining to the ceremonial aspects of its recital.[79] Aharon Shemesh has demonstrated that one of the central principles guiding the formulation of the laws of flaggelation in *Mishnah Makkot* (Chapter 3) is in fact based upon the manifestly aggadic source cited therein.[80] The links identified by these scholars between the halakhah and aggadah in Mishnah enabled them to connect ostensibly unrelated halakhot and aggadot scattered throughout the Talmudic literature. These studies tend to refute Zunz' statement that "the rigidity of the halakhah (in the Mishnah) and its succinct organized expressive format almost close the door upon the aggadah,"[81] or conclusions such as those drawn by Frankel, that "The mishnaic approach to its own 'aggadah' indicates that the mishnaic authors (the Sages) were deeply aware of the religious problem posed by the halakhah – occasionally, by virtue of its manifestly legal structure, it fails to provide people with religious guidance."[82] In contrast to these observations, the aforementioned scholars have demonstrated that halakhah and aggadah are not necessarily at cross purposes. To the contrary: they share the same philosophical-theological foundations and belong to the same literary corpus.

The conclusions deriving from these studies corroborate our own proposal that we regard the aggadic sources, and particularly those incorporated into the halakhic collections, as quasi-halakhic principles.[83] The jurisprudential model outlined in the previous section supplies its theoretical paradigm. Viewing Talmudic literature from this perspective accommodates an understanding, not only as to how the halakhah and the aggadah echo the same ideational world, but also of their integration into one and the same literary corpus. This literary phenomenon is particularly manifest in the Mishnah. The Mishnah is a relatively early document within the Talmudic corpus: the tannaim themselves edited its halakhic material and since then its original format and wording has hardly changed. The Mishnah's editorial structure is unique in the Talmudic literature, consisting of a kind of codification of the halakhah, set out in subject

78 Naeh, "Fruit of the Lips," 206–213.

79 Knohl, "Kingdom of Heaven."

80 *m. Mak. ad loc.;* cf. Shemesh, "Punishment of Flaggelation," 223 ff.

81 Zunz, *Sermons*, 44.

82 Frankel, *Ways of Aggadah*, 487.

83 The aggadah itself provides examples of halakhic rules, i.e., where a particular ruling is inferred from a case in point.

form, each subject internally organized in a manner resembling the organization of statutes in a legal system.[84]

In this sense, the Mishnah differs from the *midrashim*, both halakhic and aggadic, that are generally organized in the order of the Biblical verses, apparently by later editors.[85] The Mishnah is based primarily on a particular school of sages, that of R. Akiva,[86] one that was normally characterized by an anonymous majority opinion and/or by the opinions of those Sages who enjoyed a relatively well-established identification with the school. It is also easy to identify the opinions of those Sages who belonged to divergent traditions.

For our purposes this fact is important because the Mishnah, and to a certain extent the Tosefta, provide the framework for the discussion of tannaitic halakhah as a legal system. In addition to structural considerations, the editing is based on substantive, content-based considerations.[87] The Mishnah is, therefore, a broad complex from which one can extract principles and conceptions – in other words, its underlying, implicit thought structures. These complexes illuminate the meaning of the particular details of the rules that make up its small units. The presumption that the Mishnah is based on consolidated, unified, original thought structures is rooted in the fact that it is not eclectic. It is dominated, as stated, by one school of thought – that of R. Akiva. Naturally, the Mishnah integrates a number of considerations that are inherent to "legal reasoning," but these do not diminish the ideological constructs upon which it is premised, all of which may in turn illuminate those halakhic sources which were not included in the Mishnah (such as Tosefta, *Midrashei Halakhah*, and *Beraitot* in both Talmuds), as well as the extra-Talmudic legal sources.

These features of the Mishnah facilitate an analysis of the nature of the connection between halakhah and aggadah. In contrast to the theory that "Mishnaic aggadah" is merely rhetorical – or, alternatively, that it presents a religious ideal extending beyond the ideal ensconced in its particular details – it is suggested that the aggadah contains the key to the reconstruction of the Mishnah's underlying halakhic principles or conceptual constructs. The following discussion will demonstrate the validity of this thesis vis-à-vis the particular

[84] For our purposes it is irrelevant whether the editor – R. Judah the Prince – intended to edit the Mishnah in the form of a codex, representing the conclusive law, or to satisfy a confluence of academic and pedagogic needs. The Mishnah includes contradictions, repetitions, variant opinions without any clear resolution and other features that are normally anathema to a system of laws. Nonetheless, its consistency and systemization, the division into subjects, and its internal order are characteristic of a legal system. See Goldberg, "The Way," esp. 264–265; Albeck, *Introduction to Mishnah*, 105–106. Most scholars accept Epstein's view – that R. Judah intended to create a definitive and binding legal codex. See Epstein, *Introduction*, 225–226.

[85] Some scholars contend that the two categories – mishnah and *midrash halakhah* – reflect two different methods of study, but it is likely that the tannaim dealt with them simultaneously. See Goldberg, "The Midrash"; Halivni, *Midrash*, 58–59; Sussman, "History of the Halakhah," 58, n. 185; Hirshman, *Mikra and Midrash*, 85.

[86] Goldberg, "R. Aqiba"; Albeck, *Introduction to Mishnah*, 99 ff; Epstein, *Introduction*, 71.

[87] See esp. Knohl, "Kingdom of Heaven", 29; and Naeh, "Fruit of the Lips," 71.

chapters of Mishnah forming the focus of the present study (from Tractates *Sanhedrin* and *Makkot*). These chapters include "aggadic units" which are closely related to the adjacent halakhot. Indeed, they function as halakhic principles that explain the halakhic details of these sub-chapters.

The integrated reading of halakhah and aggadah is based upon another consideration as well, one militating in the opposite direction. While the definitive, particularistic nature of the halakhot may occasionally preclude an understanding of their underlying rationale, they certainly facilitate the precise identification of their contents. This is equally true of the disputes between the Rabbis regarding the halakhot. But it cannot be said of the aggadic sources, the contents of which are often shrouded in obscurity, due to their literary structure, the gap in time, and other reasons. For example, it is not always clear whether aggadic sections transmitted by different Sages necessarily reflect variant opinions. Assuming the validity of my assumption regarding the reciprocity of halakhah and aggadah in Talmudic literature, an integrated reading is not only productive in terms of the explanation given for the specific halakhot, but also enhances the understanding of the ostensibly obscure thought structures ensconced in the aggadah. The deficiency of one area is compensated for by the advantages of other.

As a rule, the aggadah expresses general ideas related to values, ideals, and religious proclivities, as well as to conceptions of God, Man, and the World. These ideas may be formulated in a variety of ways: through stories, homilies, interpretations of Biblical verses, adages of a theosophic, mystical, or magical nature, and the like. Their literary form and modes of expression may induce the student to conclude that halakhah and the aggadah are fundamentally dichotomous categories. Indeed, in this respect aggadah differs from the discrete, specific halakhah. However, it is precisely that aspect that distinguishes principles from rules in any legal system. It must be remembered that aggadah – like legal principles – also operates external to the halakhah: in theosophic discourse, public sermons, education, propaganda, and the like. But these differences do not detach principles from the legal system, neither do they establish or reflect a fundamental antagonism or dichotomy between aggadah and halakhah.

There were scholars who distinguished between "halakhic discretion" and "aggadic discretion."[88] If the meaning of "aggadic discretion" refers to the choice of a literary-aggadic mode to express beliefs, conceptions, and values, whereas "halakhic discretion" refers to the intellectual process of applying halakhic rules and principles in specific cases, then the distinction is both clear and justified.[89] On the other hand, "aggadic discretion" may also be understood

[88] Frankel, *Ways of Aggadah*, 495.

[89] Adhering to the prevalent formalistic trend in literary research, many scholars have tended to focus on its various literary forms ("*Midrash as Literature*"). See Hirshman, "On Midrash," 88. This also contributed to the tendency over the last generation to sever the halakhah from the aggadah.

as connoting the aggadah's conceptual kernel, abstracted from its concrete literary apparel. If the latter is the case, then one cannot speak of a fundamental or inevitable dichotomy between aggadic discretion and halakhic principles. To the contrary; they are both premised on similar conceptions and insights.

This conclusion must, however, be qualified on three counts. First, the claim that the aggadah may evince halakhic principles does not imply that all aggadah is relevant to halakhah. The aggadah is highly variegated and its contents are not necessarily connected *in totum* to the halakhah, either directly or indirectly.[90] Second, while the halakhah also comprises "aggadic considerations" – value laden, theosophic, or other – this does not preclude the existence of conceptual, formal, and other "legal" considerations, all of which share in its formulation and fulfilling the need for predictability, certainty, and other practical requirements. Considerations of this type are integral to the structure and the development of any legal system and are equally important to the molding of the halakhah, imbuing its rules with their measured and definitive quality. Nonetheless, one must be wary of mistakenly predicating the halakhah exclusively on this category of considerations. Third, halakhic principles do not reside exclusively in "aggadah." Naturally, the formulation of certain principles is purely "halakhic" – in other words, specific and incisive. In this context it should be emphasized that, in [other] legal systems as well, there is no clear-cut distinction between rules and principles, and in numerous cases it is a matter of degree. Typically, the principles formulated as halakhic rules will be at a low level of abstraction.

I mentioned earlier that the terminological distinction between aggadah and halakhah already appears in tannaitic sources, while noting that this distinction is not necessarily indicative of separation or conflict between them. Conceivably, the appearance of these terms in a number of midrashim attests to an affinity between them, akin to the connection described above. For example, in the following passage from the *Mekhilta*:

"And he said: If thou wilt diligently hearken ... to the voice of the Lord thy God" (Exod 15:26) – meaning the Ten Commandments that were given "mouth to mouth" in ten voices. "And will do that which is right in his eyes" – meaning excellent sayings (*haggadot ha-meshubahot*) which are to be listened to by all men, "and will give ear to his commandments (*mitzvot*)," meaning the decrees (*gezerot*), "and keep all of his statutes (*hukav*), meaning *halakhot*."[91]

This paragraph avoids any dichotomy between "excellent sayings" (*haggadot ha-meshubahot*), which are understood by all people,[92] and *halakhot*. To the

[90] Another related phenomenon is that in which the halakhah included in the aggadah differs from that which comprises the "halakhic sources"; see Safrai, "Attitude of the Aggadah."

[91] *Mekhilta de-Rabbi Ishmael, Vayasa*, 1 (p. 96) (emphasis mine – Y. L.). The sequel to this midrash is "I will put none of the diseases upon thee, which I have put upon the Egyptians."

[92] This homily distinguishes between "excellent sayings" and the aggadah as a whole. The nature of this distinction is not clear, but for our purposes it is immaterial.

contrary: *haggadah* (the Aramaic term for *aggadah*) is subsumed under the general rubric of performance of commandments. The midrash infers the "excellent sayings" (or: *haggadot*) from the word "thou shall do" and they are integrated together with normative categories such as "decrees" (*gezerot* – inferred from the word *mitzvot*, i.e., "commandment") and *halakhot* (inferred from the word *hukav*, "statutes").[93] The allusion is therefore to the normative aspect of the aggadah. The connection between halakhah and aggadah is also implied in the following passage from *Sifre Deuteronomy*:

Another interpretation: "My doctrine shall drop as rain" – Just as rain falls on trees and infuses them with the particular flavor (of their fruit) – the grapevine according to its flavor, the olive tree according to its flavor, the fig tree according to its flavor – so also the words of the Torah are all one, yet they comprise Scripture, Mishnah, Talmud, halakhah, and aggadah.[94]

This midrash depicts the different components – Talmud,[95] *halakhot* and *aggadot*[96] – of the Written Law (Torah; i.e., Scripture) and the Oral Law (Mishnah) as a plurality stemming from and rooted in unity ("the words of Torah are all one").[97] The midrashic author emphasizes the particular merit of the Torah which, while being "all one," is yet multi-faceted. At the same time, he alludes to the conception that the myriad reflections of the Torah are all rooted in a single source. More than emphasizing the unified source of Biblical and Mishnaic authority (Talmud, halakhot, and aggadot), it intimates that their contents are nourished by one and the same source. Like the water that provides life and sustenance for innumerable types of trees, the one Torah reveals itself in a multiplicity of diverse realms. Identical contents are individuated into halakhot in one place, and given ideational-poetic expression (*haggadot*) in other places.[98]

93 Regarding the terms "edicts" and "statutes" in Talmudic literature, see Bacher, *Erkhei Midrash*, Tel Aviv 1923, 9. The precise distinction between them is not important for our purposes.

94 *Sifre Deuteronomy*, 306, p. 339; cf. *Sifre Deuteronomy*, ibid., 113 (lines 5–9); Rosenthal found this paragraph problematic, "Oral Law," n. 41 and did not offer a solution consistent with his approach. There are many other passages in tannaitic literature expressing a similar idea.

95 The term "Talmud" apparently means "midrash" (= learning by way of exegesis). See Rosenthal, "Oral Law," 463, n. 48 and his references.

96 This reading of the text is based *inter alia* on *Sifre Deuteronomy* 344, p. 401; see Epstein, *Introduction*, 804; Lieberman, *Hellenism*, 83–84; Rosenthal, "Oral Law," 455–456.

97 Conceivably, the underlying conception of this midrash conflicts with the conception expressed in *Sifra BeHukotai*, Chapter 8: "'These are the statutes and judgments and laws' – this teaches that two Torahs were given to Israel, one Written and the other Oral."

98 This relationship between halakhah and aggadah prevails throughout Talmudic literature. See, e.g., *y. San* 11.4 (30a) "It is written 'If there arise a matter too hard for thee in judgment' (Deut 17.8). Scripture refers to a matter too hard for the Beit Din, 'for thee' – this is counsel, 'matter' – this is aggadah, 'between blood and blood' – between menstrual blood and virginal blood [...] 'between plea and plea' – between civil law and capital law, 'between plea and plea' between the laws of stoning, burning, decapitation, and strangulation' ". See also *t. San* 7.7 (p. 425); *Avot*

These midrashic passages may be read as a poetic (or "aggadic") expression of the jurisprudential model presented earlier.[99] Moreover, whereas with respect to principles of law the jurisprudential model described above leaves room for dispute between philosophers as to the source of their authority, there is no dispute regarding the source of authority of the *haggadot*. According to these midrashim, the haggadah, like the halakhah, derives its authority from the Torah, which "is all one." The conclusion would thus seem to be that the jurisprudential model that limits the law to its rules, and the Torah to its halakhot, is far removed from the foundational conceptions of these midrashic passages.

IV. IMAGO DEI AS A HALAKHIC PRINCIPLE

Our comments in the preceding two sections are critical to understanding the methodology to be adopted in our analysis of the role of Imago Dei in Talmudic halakhah. My aim in this study is to demonstrate that this concept functions as a halakhic principle as well. I do not claim the exclusivity of this principle, nor do I claim that it is the supreme, controlling halakhic principle, such that when in conflict with other halakhic principles it invariably prevails. The halakhah in all of its dimensions, including those dealt with in this study, expresses a broad range of principles, all of which may on occasion be complementary and on others conflict. My thesis is that Imago Dei constitutes a halakhic principle in the sense of playing a central and decisive role in the formulation of numerous bodies of halakhah.

The significance of our examination of the idea of Imago Dei as a halakhic principle is not limited to an explanation of its content and weight, but also to the possibility of using it as an interpretative tool to illuminate the details of the halakhot and their role in the system as a whole. Study of the halakhah as a system also requires the identification of additional principles, functioning both in concert and in conflict with the idea of Imago Dei, and the manner in which they interrelate.

In this chapter I have attempted to demonstrate that two principal factors led to the dichotomy between halakhah and aggadah in Talmudic research. One is the perception of Talmudic halakhah in terms of a formalistic jurisprudential model. This factor was supported by prevailing trends in legal theory during the first half of the twentieth century, which created a quasi-conceptual-

de-Rabbi Nathan (Version 2) Chapter 18 (20a); *y. Ber.* 9.1 (9a); *j. Kil* 9.3 (32b); *y. Pes* 5.3 (32a); *y. Bava Bat.* 10.2 (16c); *y. Hor.* 3.5; *b.Hag.* 14a; *b. Bava Bat.* 9b; *b. Nidd* 70b; *Sifre Deuteronomy* 49 (p. 115); *Lev Rabbah* 1.36; *Num Rabbah* 14. See Finkelstein, *Selected Studies* (Hebrew Part), 100–104; Lieberman, "The Halakhah in the Aggadah" and "From Aggadah to Halakhah," in *Studies*, 116–122; see also *b. San* 57b: "R. Jacob b. Aha found it written in the scholars' book of aggadah: "A heathen is executed on the ruling of one judge, on the testimony of one witness," etc.

[99] Compare Frankel, *Ways of Aggadah*, 15. The last paragraph touches upon the connection between the source (*Mikra*, *Mishnah*) and its interpretation (*Mishnah*, *Talmud*, *Haggadot*). See Finkelstein, *Selected Studies* (Hebrew Part), 104–105.

methodological barrier to an integrated understanding of halakhah and aggadah. The second factor – which I regard as the more significant one – was the desire to separate the halakhah from any aggadic, "non-rational" elements (anthropomorphism, etc.). These two factors, operating occasionally in tandem and occasionally separately, divorced the halakhah from its "emotional and theosophical roots."[100]

Both these factors are reflected in both the methodology and the conclusions drawn from the research of "Imago Dei" in Talmudic halakhah – that is, the removal of the theosophical foundation of Imago Dei from the halakhah (and occasionally from the aggadah) and its predication on ethics alone. To overcome this methodological barrier I have proposed an alternative jurisprudential model, one more congruent with Talmudic halakhah. This model provides a conceptual framework for the study of Talmudic halakhah generally, and for that of the interaction of halakhah and aggadah in particular.

Utilizing this model in order to study Imago Dei in Talmudic literature facilitates an integrated reading of the relevant *halakhot* and *aggadot*. Indeed, in contrast with the prevailing trend in research, which has been to sever the aggadic conception of Imago Dei from its halakhic meaning, I will attempt to show that the ethical understanding of Imago Dei does not, at least not in this context, replace (or even complement) its theosophical foundation.[101] To the contrary: Imago Dei provides the conceptual environment for the incorporation of ethics in halakhah precisely because of its theosophical premise. This premise infuses the halakhic principle with its special character, being a controlling factor in its formulation of the halakhic details appearing in the Mishnah, the Tosefta and in Talmudic hermeneutics. In this context, a unified reading of halakhah and the aggadah may restore the halakhah to its theological and emotional roots.[102] The general comments made by Clifford Geertz are particularly apposite to this issue:

> Never merely metaphysics, religion is never merely ethics either. The source of its moral vitality is conceived to lie in the fidelity with which it expresses the fundamental nature of reality. The powerfully coercive "ought" is felt to grow out of a comprehensively factual "is" and in such a way religion grounds the most specific requirements of human action in the most general contexts of human existence ... A people's ethos is the tone, character, and quality of their life, its moral and aesthetic style and mood; it is the underlying attitude toward themselves and their world that life reflects. Their world view is their picture of the way things in sheer actuality are, their concept of nature, of self, of society. It contains their most comprehensive ideas of order. Religious belief and ritual confront and

100 As in the words of Scholem (*supra*, section I.3), who was referring to Talmudic halakhah and not to its academic research.

101 Such, e.g., is the view of Urbach and Altmann (see *supra*, section I).

102 See Liebes, "The Jewish Myth," 256; Idel, *Kabbalah*, 156–157. Regarding the Bible, see Y. Muffs, *Love and Joy*, 1–7.

mutually confirm one another; the ethos is made intellectually reasonable by being shown to represent a way of life implied by the actual state of affairs which the world view describes, and the world view is made emotionally acceptable by being presented as an image of an actual state of affairs of which such a way of life is an authentic expression. This demonstration of a meaningful relation between the values a people holds and the general order of existence within which it finds itself is an essential element in all religions, however those values or that order be conceived.[103]

[103] Geertz, *Interpretation*, 126–127. Cf. Geertz, *Knowledge*, and especially the essay: "Fact and Law in Comparative Perspective," *Knowledge*, 167 ff.

4

On Terminology and Methodology

The difficulties confronting scholars of Talmudic literature require no introduction. The Talmudic text presents its students with problems of language, veracity, accuracy, dating, interpretation, and hermeneutics, as well as with difficulties involving the exceptional vis-a-vis the representative, its reliability, its significance, and a host of other difficulties.[1] I do not intend to deal with these problems in an abstract manner, removed from the sources, but rather as they arise in my presentation of the actual materials. This chapter focuses on terminological and methodological issues bearing directly on our subject – Imago Dei.

In my comments thus far I have employed terms drawn from the parlance of religious studies, such as "theosophy," "theurgy," and "myth," terms which in recent years have become an integral part of the study of Talmudic literature.[2] In this chapter I will elucidate the specific meaning that I have ascribed to these terms in this study and their significance. According to Kluckohn,

> There is no definition that can presume to include all the aspects of a concept used in a number of areas of research, and still be of practical use [. . .] the act of defining must be guided by considerations of convenience [. . .] compelling adherence to the core of the term's regular and accepted meaning in research terminology [. . .] it also requires simplicity to the extent that simplicity is consistent with precision.[3]

I will therefore endeavor to define these terms in a manner consonant with the unique character of the subject of research, on the one hand, and, on the other hand, with the abstract nature of these terms when used in phenomenological and comparative analysis. In doing so I have attempted to avoid a "pure" phenomenological discussion,[4] which might obscure the unique character of

[1] Sussman, "Urbach," 82.

[2] See, e.g., Idel, *Kabbalah*, 156 ff; Liebes, "The Jewish Myth"; Fishbane, "Measures of Glory"; Boyarin, "Myth and Aggadah"; Boyarin, "Midrash and Deed"; Gruenwald, "Methodology"; Naeh, "Fruit of the Lips," n. 136 and at p. 27; cf. Sussman, "Urbach," nn. 151, 158.

[3] Versnel, "Magic and Religion," 186, n. 31.

[4] Compare, Idel, *Kabbalah*, 15–16.

the phenomenon being researched. The terms are used heuristically, as provisional, working assumptions that may change in the course of research. In addition to being tools for interpretative and phenomenological research, the use of these terms also has methodological implications, which I will elaborate in the ensuing discussion.

I. MYTH

The term "myth" signifies a sacred narrative about the gods. Its sanctity confers it with decisive importance for people's lives, affecting their self-perception as well as their perception of the world, their lifestyles, rules of conduct, and the particular rituals in which they engage. This is the prevalent sense (as well as the original Greek meaning) of the term, as used both in the study of religions and in that of Jewish tradition and the Israelite religion,[5] and it is in this sense that it will be used in the following discussion. In other words, as used throughout this work, the term "myth" does not have the meanings ascribed to it in academic disciplines such as anthropology, sociology, psychology, political philosophy, etc. It is also clear that the use to be made of this term differs from its meaning as a preconceived notion or a patently false view.

The importance of myth as a phenomenological and interpretative category lies in it being the antithesis of *logos*. A myth is a tale, concerned with the concrete and figurative; *Logos* is a conceptualization and abstraction, often of the very same subjects alluded to by the myth.[6] While *Logos* depicts an abstract conception of divinity, generally beyond the capacity of human cognition, myth depicts God in a concrete manner, with a tangible form and image and as the possessor of personality. As opposed to *logos*, which is concerned with "frozen" conceptual relations between abstract entities, the myth is a narrative that occurs in a primordial epoch,[7] albeit one which is relevant in the present.

In accordance with the use made of the term below, in order for a story to be considered as a myth it must be read literally. A literal reading means a propositional[8] reading, which is neither parabolic, nor metaphoric, nor allegoric. An allegoric or metaphoric reading of a myth may also be propositional, but in that case the myth would concern abstract entities rather than tangible, concrete beings and events. A myth of this kind is a *logos* expressed in concrete terms. The literal-propositional reading may even incorporate poetic elements which are not indicative of corporeal entities, provided that in its entirety it constitutes a narrative about these entities.

[5] See entry on Myth in *ER*, 10: 261–285; Ricoeur. *Symbolism of Evil*, 5; Liebes, "The Jewish Myth," 245; Idel, "Metatron,".

[6] Uffenheimer, "Myth and Reality," 139.

[7] Ricoeur, *Symbolism of Evil*, n. 5.

[8] For an analysis of the distinctive approaches to a literal reading of myth, see Halbertal and Margalit, *Idolatry*, 80–87.

A narrative about the gods will become sacred – that is, a significant or "serious" myth – to the extent that it provides its votaries with a world-view. The myth is the cornerstone of their lifestyle, their ritual acts, the manner in which they perceive the rhythm of nature and humanity, and of the ways in which they assess themselves and others.[9]

In this sense, the term "myth" aptly describes the tannaitic interpretation of the creation of man in God's image as presented above. The heroes of the story, God and humanity, are both concrete and figurative. These contours are particularly pronounced in the idea of "the image as presence." The Bible presents the idea of Imago Dei in the form of a primeval epochal tale, and this structure is similarly retained in Talmudic literature. In its tannaitic rendition, the story of humanity's creation in the divine image is a myth because of its eternal relevance. Its relevance is not just a derivative of its existence in what Eliade refers to as "mythical time."[10] The myth is eternally important because of its imperative, prescriptive nature, as a source of precepts or, more succinctly – their theurgic affect. This feature endows the myth with its sanctity as a foundational narrative for a world-view that engenders a variety of halakhot, pertaining to numerous aspects of Talmudic halakhah.

The category of myth is also important for the reconstruction of conceptual superstructures in tannaitic literature. In contrast to metaphor, myth is a complex, dynamic narrative. The various categories of metaphor and symbol generally devolve on a particular word or expression. As such, they are partial, and truncated in comparison with myth.[11] Most tannaitic homilies, as is well known, are based upon verses from Scripture, often on fragments of verses or even isolated words. A superficial examination of the tannaitic corpus gives the impression of a random collection of aphorisms or interpretations lacking any organizing principle. This impression is further substantiated by the presumption that these clusters of homilies are isolated parables, metaphors, symbols, and motifs, without context. The claim made in this book is quite the opposite. There are thought structures that organize this oeuvre, which may be reconstructed with the assistance of the category of myth – a category congruent with the character of the homilies, *aggadot* and *halakhot*, which allows for their consolidation into broad ideational edifices.[12] The additional methodological

[9] This component of myth has been dealt with by a number of scholars. See C. Kluckohn, "Myths and Ritual"; Geertz, *Interpretation*, 123.

[10] See Eliade, *The Myth of the Eternal Return*, 49–91. For more bibliography, see Idel, "Time and History," nn. 3–4.

[11] See Heinemann, "Allegorization," 248; Ricoeur, *Symbolism of Evil*, 18; cf. Chenu, *Nature, Man and Society*, 121 ff.

[12] Philosophical allegory, too, while extracting speculative themes from myths, deals with broad conceptual structures, and not just isolated motifs. However, the allegory usually functions as a method of reading the myth and not as a means for its reconstruction. See Halbertal and Margalit, *Idolatry*, p. 88.

considerations pertaining to the utilization of the category of myth for the reconstruction of thought complexes in Talmudic literature will be dealt with in the Chapter 5.

II. THEOSOPHY

The term "theosophy" (*theos* = a "divine being," a "god"; *Sophia* = "wisdom"; hence, "divine wisdom"), apparently made its first appearance in the writings of the Church Fathers, after which it underwent numerous metamorphoses. It was initially identified with the more prevalent term (at least in our day), "theology." But at some point between the period of the Church Fathers and the Renaissance, there was a parting of ways.[13]

Although neither "theosophy" nor "theology" accurately characterizes the religious thought of the early rabbis, "theosophy" is the more apposite term, encompassing a larger number of the salient features of the tannaitic creation. More so than theology, theosophy is umbilically connected to Scriptures, in which it attempted to root its doctrine. These doctrines relate primarily to God's inner life and, in a broader sense, to the connection between the mysteries of the Godhead and the created world, particularly humanity.[14] One of the dominant tendencies of theosophy is its intensification and augmentation of the contents of revelation by scriptural exegesis.

The affiliation of theosophy with Scriptures also evinces a tight connection to myth. Theosophy is a type of non-speculative reflection on myth. As distinct from theology, which tends to sterilize the narratives and images in Scripture by reducing them to abstract concepts, theosophy preserves their vitality in an attempt to reveal new horizons by sophisticated hermeneutics, and as such to revitalize them.

These characteristics of theosophy indicate a greater affinity to Talmudic literature. The midrashic relationship to the Biblical text resembles the relationship between theosophy and myth. Scripture and its hermeneutic interpretation are the epicenter of this body of literature,[15] which uses these methods for the aggrandizement of the Biblical theophany. Like theosophy, midrash has a non-speculative tendency. It preserves the dramatic, concrete biblical foundation for its further illumination and development. These aspects are particularly applicable to the midrashic interpretation of the myth of humanity's creation in God's image. The scriptural presentation of this myth is so compact that it invites, or perhaps even compels theosophic reflection in order to unearth its subterranean layers. This book will devote particular attention to these twin

[13] Regarding the evolution of the term "theosophy," see Faivre, "Theosophy."

[14] Ibid., 465.

[15] It is noteworthy that, in the entire corpus of the Sages, the only literary source mentioned is Scriptures! Similarly, it is difficult to find anything which is not appended to a scriptural source. See Harvey, "Rabbinic Attitudes," 89.

axes: the scriptural background of the sources, and their hermeneutic-interpretative character. In essence, these are two sides of the same coin, because the analysis of the sources in their Biblical context means paying attention to the fact that these sources are first and foremost interpretations of Scriptures.[16]

The study of Talmudic hermeneutics has progressed tremendously over recent years, and this is not the place to describe its achievements. Suffice it to state that the methods of midrashic interpretation, which served as a source of embarrassment to scholars of *Wissenschaft des Judentums*, being perceived as yet another irrational aspect of Talmudic literature – are now viewed from an entirely different perspective. Scholarship has liberated itself from the dichotomy of "objective" (midrashic) interpretation, as in the understanding of Scriptures according to the "meaning of words and subsequent developments, irrespective of the exegete's personal views," and its "subjective" interpretation (i.e., "interpretation that goes beyond the elucidation of the meaning of Scripture in accordance with its clearly discernible context and continuity").[17] It internalized the understanding that there is no "literal" meaning of Scriptures (especially under the assumption of its unity), and therefore philological tools alone are insufficient for its explication.

The methodological importance of the term "myth" for the restoration of Talmudic thought structures, is directly connected to the methodological function served by the term "theosophy"; the focus on the Bible, the manner in which the Sages interpreted it and, particularly, the manner in which they understood its messages, is an effective method for the reconstruction of their own thought constructs. Serious consideration of midrashic hermeneutics entails a number of complementary aspects, for even where the midrash relates to only part of a verse or even an isolated word, it does not purport to uproot the word from its immediate Biblical context. This assumption impacts directly on the interconnections among different midrashim which explain different verses that are part of the same Scriptural passage.

In the subject under discussion – the Creation of humanity in God's image – the Bible presents a clearly delineated thought structure, which facilitates the identification of its components in different parts of the Bible and the tracing of its subsequent development in Talmudic thought. As such, the Biblical myth serves as a convenient starting point for the reconstruction of the Sages' perception of the subject.

The term "theosophy" is generally connected to "esotericism." Theosophy is esoteric, both because of its assumption that the myth contains a covert aspect to which the simple believer is not privy, and because its contents concern the secrets of divinity. It is undisputed that the Sages had an esoteric doctrine,

[16] Hirshman, *Mikra and Midrash*, Chapter 9; Meir, *The Midrashic Story*, 11; Boyarin, *Intertextuality*, esp. Chapter 2; Zakovitz, *Inner Interpretation*, 135.

[17] According to Meir, *The Midrashic Story*, 18.

although scholars are seriously divided regarding its character.[18] We shall find that the esoteric dimension of our topic is occasionally alluded to in some of the sources discussed below. Moreover, there are sources that anchor the subject of Imago Dei in the explicitly esoteric themes of Talmudic literature – "the Work of Creation" (*ma'aseh bereshit)* and the "Work of the Chariot" (*ma'aseh merkavah'*). In this context it must be remembered that Imago Dei is at the center or, more precisely, the apex of the account of Creation in Genesis 1.

Finally, as distinct from theology, theosophy, and even more so mythology, is infused with emotions, experiences, and religious consciousness. Systematic theoretical thought is not one of the hallmarks of Talmudic literature, neither in form nor in content. This book is an attempt to reconstruct an ideational structure embedded in this literature, but it should not be confused with theology, which reflects strict, systematic scholasticism, and which generally tends to displace the living religious experience.

III. THEURGY

The term "Theurgy" joins the word for God (*theo*) with that for "action" or "acting upon" (*engon*). The term has a dual meaning, apparently intentional: an act of God (on man), and an act of man (on God).[19] It is prominent in a number of religious movements in the Greco-Roman world during Late Antiquity, in Hermeticism and Middle Platonism. Theurgic practices were also widespread among Christian circles, in the writings of Dionysius the Areopagite (pseudo-Dionysus), who learnt them from Proclus.[20] The term "theurgy" evidently appears for the first time in a Greek work known as the Chaldaean Oracles – a collection of poetic fragments written in hexametric form, dated to the end of the second or beginning of the third century.[21] The term "theurgy" is used by historians of Late Antiquity to refer to rituals intended to purify the soul and which, in so doing, facilitate its liberation from its bodily chains and from the terrestrial world, and enabling it to cleave to, or become unified with, God or one of His emanations (*anagoges*). Porphyry (d. 303), for example, regarded theurgy as an effective tool for purifying the inferior (sensory) part of the soul, which delayed the release of its superior part (intellectual) from the bonds of physicality by way of intellectual-contemplative activity. Iamblichus of Coele-Syria was his student, and he regarded theurgy as a replacement for Platonic contemplation (*theoria*). In his view, intellectual contemplation alone cannot produce a state of divination or union with the cosmic Eros; only by theurgic rites can one induce

[18] See *m. Hag* 2.1; *t. Hag* 2.1 (ed. Lieberman, 380), and *b. Hag* 11b–15b. Fishbane, "Measures of Glory," demonstrates the dual sense of esoterics in *Sifre Deuteronomy* 422.

[19] Dodds, "Theurgy," 160, n. 10; Majecik, *The Oracles*, 22.

[20] See A Louth, *Origins*, 163–185.

[21] Regarding the Chaldaean Oracles and the surrounding scholarly literature, see Majecik, *The Oracles*, 1–46.

the absolute fusion with the One.[22] Either way, it is clear that theurgy was a domain reserved for the gifted few and not a practice intended for the masses.[23]

The various theurgic traditions – the Chaldaean Oracles, Hermeticism, Middle Platonism, even the Christian Pseudo-Dionysius – all shared a common metaphysic. This originated in the Platonic tradition, which perceived divinity in both monistic and transcendental terms. God is generally described as pure intellect (*nous*). As distinct from the "noetic" divine world, ours is a material (*hylic)* world. The divine world and the terrestrial world are connected by emanations, proceeding eternally from God. These emanations are not transcendent in any sense, and the *theourgus* can merge with them, utilizing certain techniques that enable their interaction.[24] The theurgist succeeds in cleaving to the One by virtue of His manifestation in man or an image.[25] Indeed, icons of the gods were among the most widely used appurtenances in pagan theurgic practices. Such practices were based upon the idea of "Image as presence" (discussed earlier), in which the god is attracted to his image, and manifested in it. This provides an understanding of theurgy as an "act upon" the gods, or as "creating them." Performance of an act upon the icon is intended to assist the theurgist to achieve his spiritual objective of clinging to or achieving unity with the divinity; as such, it also illuminates the complementary aspect – the divinity's acts on or within humanity.

Already by the end of late Antiquity, a distinction had emerged between theurgy and magic. Despite the similarity in their exterior forms – both theurgy and magic share almost identical practices[26] – their goal is different. Magic has an earthly objective (foreseeing the future, curing illnesses, economic success, and the like), for the benefit of the magician and his faithful.[27] Theurgy is religiously or spiritually oriented,[28] and is usually conducted in the form of broadly accepted, institutionalized rituals.[29]

[22] Luck, "Theurgy," 187; Shaw, "Geometry," 53, 54. For a detailed survey of the term's etymology, see Norris, "Theurgy," 1482; and Dodds' classic article, "Theurgy."

[23] Dodds, "Theurgy"; Norris, "Theurgy"; Majecik, *The Oracles*, n. 20; Lane-Fox, *Pagans and Christians*, 207–208.

[24] Majecik, *The Oracles*, 5–16.

[25] Regarding this technique of Hermaticism, see Fowden, *Egyptian Hermes*, 143. Regarding Iamlichus, see Shaw, "Geometry," 57, and regarding Neo-Platonism in general, see Dodds, "Theurgy," 293; Luck, "Theurgy," 192.

[26] Dodds, "Theurgy," 291; Shaw, "Geometry," 54.

[27] Schwartz, *Astral Magic*, 11–19.

[28] Fowden, *The Egyptian Hermes*, 133. Even though Iamblichus assigned theurgy another role – namely, the preservation of the natural order of the world – he too tended to stress its spiritual purpose. See Shaw, "Geometry," 48, n. 3. Majecik (*The Oracles*, 23) who emphasizes the element of force associated with the magician's power, which operates on the Godhead against its will. Theurgy, on the other hand, is passive, its focus being on self-redemption, which is ultimately achieved as a result of the divine actions upon the theurgist. This point is particularly emphasized in Iamblichus.

[29] See Dodds, "Theurgy," 129; Durkheim, *Elementary Forms*, 57, 404; Halbertal and Margalit, *Idolatry*, 105, 273; Idel, *Kabbalah*, 157, 355, n. 10.

Only recently did the term "theurgy" gain footing in academic study of the Jewish tradition and religion as a phenomenological research tool.[30] Gershom Scholem referred to it in a manner similar to its above description in describing the practices evidenced in texts of *Heikhalot* and *Merkavah* literature.[31] But following Scholem, other scholars gave the term a different connotation. The term "theurgy" in scholarly usage continued to indicate actions which a man performs *on God* (its literal meaning), and as such it retained its original import, but there was a change in its other components. As distinct from its use in the pagan world, the Chaldean Oracles, the Hermetic writings and Middle Platonism, the purpose of the "theurgic" act in early rabbinic literature was not the elevation of the soul or mystical union.[32] The theurgic act, generally consisting of the performance of (some of) the commandments,[33] is seen as an act performed on God, for the sake of the God Himself. It is occasionally (albeit only rarely) accompanied by an act of mystical elevation; its primary goal is to act upon God in order to "augment Him," to "empower" Him, or to prevent His diminishment, depletion, or weakening. For purposes of this book, I will distinguish between "proactive theurgy" and "preventative theurgy." Proactive theurgy is a positive act consisting typically (though not exclusively) of the performance of a positive precepts, whose purpose is to augment or to restore God's power. Preventative theurgy is usually expressed in the "negative" precepts, their aim being to prevent the "diminution" or "weakening" of God.[34]

Early rabbinic theurgy is rooted in a conception of divinity that is distinct from the pagan conception. In contrast to the Neo-Platonic conception of divinity, according to which God is abstract and transcendent, the rabbinic God is anthropomorphic and dynamic. Like human beings, God too is forever changing, for better or for worse. Admittedly, this Divine "rectification" may originate in God himself, but numerous Talmudic sources tend to emphasize specifically the divine need for the acts of human beings for purposes of His empowerment and augmentation. Not only is God not self-sufficient, but He is also vulnerable. The acts and omissions of human beings are therefore liable to weaken Him.

[30] To the best of my knowledge, there is no Hebrew parallel to the term "theurgy." The term will be used below for phenomenological purposes only. Despite their chronological proximity, I do not claim any historical connection between pagan theurgy and theurgy in Talmudic literature.

[31] Scholem, *Major Trends*, 56–57, 77–78. Scholem analyzes passages in which the *Merkavah* visionaries adjure, and thereby summon (thus causing their manifestation) the "Princes of Majesty, Fear, and Trembling." See *Shi'ur Qomah*, in *Merkevet Shlomo* 1.2. Cf. Idel, *Kabbalah*, 355, n. 14. It should be noted that, although Scholem does occasionally refer to the centrality of theurgy in Kabbalah, he dealt only sparingly with theurgic Kabbalah.

[32] See Liebes, "The Messiah," 181. This is almost always the case with Kabbalistic literature.

[33] Idel, *Kabbalah*, 157.

[34] This distinction approximates, but is not identical to, Idel's distinction between universe maintenance theurgy and augmentation theurgy. See Idel, *Kabbalah*, 156–172.

In ancient rabbinic theurgy, at least with respect to Imago Dei, the theurgic imperative for man does not emerge in the eschatological-soteriological context. The divine need for the acts of men is not the result of some internal divine crisis, against which the ritualistic-theurgic efforts must ultimately prevail. Rather, it is an ongoing "natural" primal need, deriving from God's inner dynamic and His essence as not self-contained or self-sustaining. Thus the performance of commandments (theurgy) is not a form of messianic rectification, to be completed by a concentration of ritual-theurgic efforts at a particular historical moment, but rather a regular, ongoing daily effort.

According to Talmudic sources, especially those connected with the subject of Imago Dei, the theurgic effect of the majority of *mitzvot* is not dependent upon the performer possessing any particular "theurgic (or theosophic) knowledge," nor is it contingent upon any particular intention. All that is required is the precise performance of the *mitzvah*. While authors of the theurgic practices (consisting of the halakhot) certainly have this knowledge, the theurgic affect is not dependent upon the performer's knowledge. Here, too, rabbinic theurgy differs from pagan theurgy, which is essentially "noetic" in the sense of the crucial role assigned to theurgic knowledge.[35] The theurgic mechanism discussed in this book is based on the idea of image as presence. This mechanism is a sympathetic one, requiring no knowledge on the part of the actor other than precise knowledge of his halakhic obligations.

The efficacy of the theurgic act on God is mechanical, almost automatic, and from that perspective there is an affinity between theurgy and magic. Both are distinct from acts whose influence on God stems from His personal relation with people. Prayer, for example, may placate God and motivate Him to forgive and pardon, but in such a case one would not say that the worshipper's prayer had a theurgic effect on God, given that prayer must "pass through" the filter of God's will. God is at liberty to answer the prayer or to ignore it. It will be recalled that this aspect of will in the divine personality was emphasized by Kaufmann, for whom the personal-voluntary nature of the Israelite God elevated it above magic.[36] Talmudic literature indeed emphasizes God's personal-voluntary nature in his interrelations with human beings, and especially the Jewish people. On the face of it, this tendency tends to obscure the theurgic dimension, and in fact distinguishes Talmudic literature from Kabbalistic literature, in which the personal aspect of God is restricted, facilitating the identification of the theurgic dimension. This difference is one of the underlying assumptions of the view endorsed by numerous scholars, that theurgy was an innovation of medieval Kabbalistic literature.

[35] According to Iamblichus as well, whose affinity to the Kabbalah was based on his distrust of the efficacy of contemplation, there is still an intellectual component in the theurgician's actions. See Shaw, "Geometry," 55; see also Luck, "Theurgy," 187.

[36] Kaufmann, *History*, 2: 344 ff.

Yet the personal nature of God neither precludes nor diminishes the existence of a "mechanistic" theurgy. A radical, essential distinction between "autonomous will" and manipulative influence is foreign to Talmudic literature, as it is to Scripture. This is equally true with respect to Greek culture, in which the persuasion, the cajoling, and the temptation, both of men and gods, often have a manipulative and even magical character. In pagan theurgy, interpersonal and mechanic foundations are interwoven. Following the animation of the image by means of a theurgic-mechanistic ritual, the theurgist establishes a personal relationship with it, often involving a manipulative element. The augmentation of God's power may well be integrated into an interpersonal relationship.

To summarize: the meaning of the term "theurgy" in this book is an action (usually of men) upon God, for the sake of God. Due to the dynamic, non self-sufficiency of God, these actions are of critical importance to Him. This theurgic model, which does not require any technical-theurgic or speculative knowledge on the theurgist's part, is particularly apt for our subject and to its halakhic applications. As a theurgic model it is sympathetic, drawing on the principle of "image as presence," which is the cornerstone of the conception of Imago Dei in tannaitic sources.[37]

Just as the scholarly literature tended to deny any anthropomorphism in Talmudic literature it similarly attempted, with even greater force, to purge it of any theurgic foundations. Research gave at least passing attention to anthropomorphism, and there were even those "marginal" scholars who devoted to it special attention which was not necessarily apologetic. Such was not the case with respect to theurgy, regarding which scholarly literature adopted an almost unanimous view. Only rarely were scholars prepared to view the commandments as serving a divine need and in those rare instances where they did so, they interpreted them in a manner far removed from the simple meaning.

Moshe Idel has asserted the theurgic nature of Talmudic theosophy.[38] Idel critiques the above-mentioned research trend, which he replaces with "the theurgic nature of the mitzvot" in early rabbinic tradition. Idel distinguishes among different types of theurgy in rabbinical literature, describing their evolution in Jewish and post-Talmudic literature. Yehudah Liebes did not devote a detailed study to rabbinic theurgy, but in some of his studies devoted to mysticism and myth in rabbinic literature he noted the importance of theurgy in their world-view.[39] Ch. Mopsik followed in the path of Idel, and added further sources.[40] Otherwise scholars, particularly scholars of Talmudic literature, have paid but scant attention to theurgic ideas and conceptions in the tannaitic literature.

[37] I do not assert that this is the only theurgical model found in tannaitic literature. An elucidation of other models would require another study.

[38] Idel, *Kabbalah*, 156 ff.

[39] Liebes, "Judaism and Myth," 258; Liebes, *Elisha's Sin*, 101; cf. Gruenwald, "The Writing," 93.

[40] Mopsik, *Les grands*.

Like the other scholars, Idel premised his observations on aggadic rather than on halakhic sources.[41] A full substantiation of his thesis would require a thorough examination of the theurgic nature of the commandments in the halakhic sources themselves.[42] A thesis based exclusively on aggadah might be suspected of being tainted by an excessively literal reading of an idea which is not theurgic in essence. Moreover, the critic might inevitably claim that any particular aggadic homily reflects an idiosyncratic position, rather than of the halakhah itself, which is devoid of any magic-theurgic foundations. My aim is to show that the theurgic thought complex that forms the basis of the *zelem* theosophy lies at the foundation of a number of corpii of halakhah, with all their details. This will enable us to prove that theurgy is an organic part of the halakhah, and not just a thought structure imposed on its commandments from without, *post factum*.[43]

As will be evident from our discussion to this point, the terms "myth," "theosophy," and "theurgy" are not independent and self-sustaining concepts. Rather, they are inseparably intertwined; theosophy concerns the interpretation of myths and, as opposed to theology, does not diminish their vitality. Theurgy assumes a dynamic-mythical concept of divinity, as illuminated by the Sages' theosophic exegesis of Scripture. This system of terms is an alternative to the terminology that dominated the research of Talmudic literature. The latter draws from the terms and models drawn from rationalist Maimonidean thought structures, which formed the basis for the "construction" of the world-view attributed to tannaitic and amoraitic world. The purpose of this chapter was to present the alternative terminological network, which will be of assistance in the reconstruction of the thought structure of humanity's creation in the Image of God in the early, tannaitic layer, of Talmudic literature.

[41] Idel analyzed, *inter alia*, the following sources and their parallels: *Pesikta de-Rav Kahana*, 25 II: 379–380; *Lev. Rabbah* 12.13; *b. Ber* 7a; *b. Bava Bat.* 99a.

[42] This was the approach taken by Naeh in his article "Fruit of the Lips," section 3.b, where he noted the ecstatic foundations of the laws of prayer, according to R. Akiva.

[43] According to G. Scholem and his followers, theurgy was an innovation of medieval Kabbalah, which imposed the theurgic world view on religious practices which were entirely foreign to it. According to Silman, halakhic decisions (and, by extension, halakhic acts) affect real changes in the world (though not necessarily in God), *inter alia* on biological processes, and even on the past. Silman illustrates this phenomenon in halakhic literature, from tannaitic times through recent generations. See Silman, "Determinations."

5

The Four Modes of Judicial Execution

I. INTRODUCTION

My analysis of the rabbinic interpretation of Imago Dei begins with the halakhot concerning the judicial procedures involved in execution. Initially I shall focus specifically upon how the Rabbis shaped the four modes of execution (*arba' mitot beit din*). I intentionally begin with an analysis of the halakhah and not of the aggadah. There are many key aggadic sources concerning Imago Dei, which we will analyze closely below, but as these are closely intertwined with legal matters, we will have a better understanding thereof after our analysis of the details of the halakhah. I will demonstrate that many of these halakhot are fundamental expressions of the meaning of Imago Dei in tannaitic literature. Simply put, we cannot properly understand the meaning of Imago Dei as a central focus of rabbinic discourse about execution without first engaging in an in-depth investigation of the halakhic details that govern it. A similar procedure will be followed concerning several other subjects to be discussed below, including murder and capital punishment, flagellation (*malkot*), and the laws of procreation, marriage, and divorce. Once properly explicated, the concept of Imago Dei will unite the entire complex of these halakhic rules into a unified structure.

Mishnah Sanhedrin outlines the procedures for the trial and punishment of a person suspected of committing an offence punishable by death. It begins with the composition of the court and its powers (4.1), followed by the rules governing the conduct of the trial (5:1–4), the interrogation of witnesses and other rules of evidence (4.5–5.4), and a description of the proceedings leading up to the verdict itself (5.5–6.1). Finally, the Mishnah concludes with the actual process of execution of the condemned, followed by postmortem hanging, burial, and the laws of mourning that apply to his relatives. We should emphasize that the court has no discretion regarding the punishment of a person convicted of any of these crimes. According to tannaitic halakhah, which is like

Biblical law in this respect, judicial execution belongs to the category of what modern jurisprudence would call "mandatory punishment."

The Mishnah describes four modes of execution: *sekilah* (stoning), *sereifah* (burning), *hereg* (decapitation by sword), and *henek* (strangulation). The description of these last three modes appears in the Mishnah (7.2–3) after the procedure for stoning has already been fully outlined in Chapter 6. Chapter 6 of *Mishnah Sanhedrin*, which is devoted completely to a description of the procedure for execution by stoning, is thus a subsection within the larger discussion of capital crimes, contained in Chapters 4–11. The procedure for execution comprises the following stages: the leading of the condemned to the site of execution, his confession, the execution itself, and postmortem hanging.

Although there are four modes of execution, only one of them – death by stoning – is described in full detail by the Mishnah. One reason for this is that only those who are stoned (or, according to a variant opinion, only some of those who are stoned) are subsequently hanged.[1] According to the Rabbis, hanging occurs after execution; it is regarded as a kind of supplementary punishment for particularly grave offenses. The significance of this factor will be explained further on.

After describing the entire criminal procedure, the Mishnah goes on to describe how the other three forms of execution – burning, decapitation, and strangulation – are carried out (7.1–3). In contrast to the Mishnah's full description of the procedure of stoning, its discussion of the other three modes of execution is limited to a description of the execution itself. Nevertheless, there are grounds for arguing that the Mishnah intended the practical implementation of the other three modes of execution to be integrated into the full execution procedure as described in Chapter 6.

In this chapter we shall posit two central theses: (a) the tannaim formulated the modes of execution (apart from execution by decapitation) in a manner that prevented substantial bodily harm to the body of the condemned; (b) this principle was derived from their understanding of divinely imposed death. When carrying out execution, the human court must imitate executions performed by the "divine court." In tannaitic parlance, "Just as death at the hand of Heaven leaves no mark, so too death by human hands leaves no mark." At the end of this chapter, and particularly in Chapter 6, I will argue that underlying the adoption of these two principles is the iconic conception of humanity's creation in God's image. Through analysis of the tannaitic descriptions of execution and related texts concerned with Imago Dei, I will posit that an iconic conception of God's image ("image as presence") led the tannaim to ascribe theurgic significance to these halakhot, a point reflected in the manner in which they shaped the modes of execution.

[1] See the dispute between the Rabbis and R. Eliezer, *m. San.* 6.4; and cf. *b. San.* 45b and *Sifre Deuteronomy* 221 (pp. 253–254).

Our claim that the tannaitic modes of execution were formulated to preserve the bodily integrity of the condemned, insofar as possible, is not new to scholarship. Its first proponent was Nehemiah Brill (1885), who raised it in relation to burning and strangling. In 1906 Adolf Büchler extended this claim to the other methods of judicial execution.[2] Both of them postulated that the need to avoid bodily damage to the condemned was intended to facilitate its bodily resurrection in the World to Come. Elsewhere in my discussion I will address the problematic nature of this thesis, which lacks any corroboration in the sources. Büchler was notably hesitant in making this proposal, and ultimately rejected the thesis pertaining to the World to Come. He likewise recanted his claim that the tannaim designed the methods of execution with the express intention of preventing bodily damage. Interestingly, in all the numerous subsequent scholarly studies of execution, this claim never resurfaced.[3]

More recently, Peretz Segal has claimed that the Talmudic modes of execution were patterned after the divinely-imposed executions found in the Bible.[4] Segal did not relate to the other characteristic of execution already noted by earlier scholars, such as the prevention of bodily damage to the condemned during the process of execution. Although he did succeed in highlighting a substantive feature of some of these halakhot, his explanation is problematic. Segal focuses on the ritualistic-expiatory nature of execution, which he parallels with sacrifice. However, this parallel ultimately fails to explain the rabbinic formulation of execution, because the modes of execution are in fact quite distinct from the manner in which sacrifices are offered. Burnt sacrifices were completely consumed, whereas the body of the person executed by burning (as well as by the other modes of execution) remains intact.

In a study devoted to the manner in which ethical considerations shape hermeneutical choices in tannaitic literature, Moshe Halbertal dealt with the subject of the tannaitic conception of execution,[5] positing the thesis that the intention was to preserve the bodily integrity of the condemned. Halbertal suggests that the preservation of the corpse's integrity reflects the tannaitic theology of humankind being created in the Divine image, a theology which for the tannaim had anthropomorphic meaning. During the course of an illuminating discussion, he offers this supposition with some hesitation, as he finds it to be contingent on the tannaitic interpretation of postmortem hanging. The tannaim offered three interpretations of the latter law, only one of which pertains to the concept of creation in the Divine image. In my discussion of execution I will relate to some of the insights which appear in Halbertal's study, as well as to certain fundamental differences which exist between our analyses.

[2] See Brill, "Comments"; Büchler, "Capital Punishment." Büchler was a pioneer in the research of this subject, even if only in gathering the relevant material from early literature.

[3] For a detailed review of the research on capital punishment, see Lorberbam, *Zelem*, 173, n. 11.

[4] Segal, "Liability."

[5] Halbertal, *Revolutions*, Chapter 7.

In the following analysis, the order of the modes of execution does not correspond to the sequence of their appearance in the Mishnah. I begin by discussing burning and strangulation, as the Talmudic sources regarding these modes explicitly enunciate the principle of bodily preservation. I will then discuss an exception among the modes of execution – decapitation (*hereg*) – a method that applies exclusively to murder. Here I will suggest an explanation for its exceptional status, a subject to which I will return in Chapter 7 in my discussion of murder and its punishment. The chapter then continues with an analysis of stoning (*sekilah*). Finally, I will conclude by analyzing the sources concerning the rabbinical formulation of hanging, as in that discussion the concept of *zelem* is most outstanding, shedding light on the entire complex of laws determining the modes of execution.

II. BURNING

1. Internal Burning

The Mishnah gives the following description of execution by burning:

> The commandment of [those condemned to burning:
>
> They would bury him into dung up to his knees and place a hard cloth within a soft cloth, and wind it around his neck. This one would pull this way and that one would pull the other way until his mouth opened. They would light a wick, throw it into his mouth, and it would descend into his body and burn his innards.
>
> R. Judah says: Had he died at their hands [i.e., being strangled by the rope before the wick was thrown into his mouth], they would not have fulfilled the requirements of execution by burning. Rather, they should force his mouth open with pincers against his will, [after which] they would light a wick, throw it into his mouth, and it would descend into his body and burn his innards.
>
> R. Eleazar b. Zadok said: It once happened that a priest's daughter committed adultery, and they surrounded her with bundles of sticks and burned her. The Sages said to him: That was because the court at that time was not expert [in law].[6]

In the Bavli, R. Matna interprets "wick" as "a lead bar" – that is, molten lead.[7] The most striking characteristic of the Mishnah's description of burning is the absence of fire, which the Bavli feels the need to justify by resorting to a midrash (*b. Pes* 75a): "'She shall be burned' – this includes all kinds of burning which derive from fire." The fire – or more precisely, the "derivative of fire," as

[6] *m. San* 7:2. The citation is from the Kaufmann manuscript (which is the source of all of the Mishnah below, unless stated otherwise).

[7] *b. San* 52b. The citation is from the Yemenite manuscript of Sanhedrin, as are the citations below. I wish to thank Dr. Mordechai Sabato for providing me with a transcript of this manuscript. On the nature of the Yemenite manuscript of *Bavli Sanhedrin*, see M. Sabato, *A Yemenite Manuscript of Tractate Sanhedrin and its Place in the Text Tradition*, (Dissertation Series), Jerusalem 1998.

described in the Mishnah – does not disfigure the external features of the body because it is internal.

The desire to avoid disfiguring the body is also manifested in the fine details of the execution, the most obvious of these being the hard cloth placed inside the soft cloth. Rashi explains, "Because the soft one does not strangle him sufficiently to force him to open his mouth and the hard one maims his throat and disfigures him, the hard one [is inserted] inside [in order] to strangle him, and the soft one outside to protect."[8] The preparatory stage to burning is identical to that of execution by strangulation.[9] Strangulation, the default form of execution applied to the majority of those crimes whose mode of execution is not specified in the Torah, does not disfigure the body at all.[10] The Mishnah seems to be configuring the execution by burning – that mode of execution we would have assumed to be most disfiguring – in a manner as close as possible to strangling, that mode specifically designed to leave the body intact. Rabbi Judah's critique reflects his concern that this preliminary stage would (perhaps intentionally?) cause death and obviate the need for burning.

According to Rashi, he is buried in dung up to his knees "so that he should not writhe about, causing the wick to fall on his outer flesh." If this is correct, and it seems a likely explanation, then even this small detail also expresses the attempt to avoid disfiguring the body of the condemned.

The wish to create a means of execution by burning which does not disfigure the body is most striking when compared with execution by "burning" as described in other sources, particularly those in the Bible. In the Bible, "burning" is invariably intended in the simple, literal sense – as complete consumption of the body. Regarding the man who sleeps with a woman and her mother, it states, "They shall be burned with fire, both he and they" (Lev 20:14), while regarding the daughter of a priest who sexually defiles herself, "It is her father she defiles, she shall be burned with fire" (ibid., 21:9). In addition to these laws, there are several Biblical accounts of events in which people were executed by burning, all of which involve actual fire. Concerning Akhan's family and property, we are told, "And all Israel stoned them with stones and burned them with fire" (Josh 7:25). Judah commands regarding his daughter-in-law Tamar, "Bring her out and let her be burned" (Gen 38:24).[11] The Bible similarly describes execution by

8 *b. San.* 52a, Rashi, *s.v. zeh kasheh*.

9 *m. San.* 7.3: "The commandment [concerning how to execute those condemned to] for strangulation [is as follows]: They would bury him into dung up to his knees and place a hard cloth within a soft cloth, and wind it around his neck. This one would pull this way and this one would pull that way until his soul would depart."

10 *Mekhilta de-Rabbi Ishmael, Nezikin* 5 (translation based on *Mekilta de-Rabbi Ishmael*, Schiff Library of Jewish Classics, Lauterbach, (3 vols; Philadelphia 1933, vol. 2, p. 43); cf. below, section III.2.

11 See also Judg 12:1; 15:6. For additional sources, see Büchler, "Capital Punishment," 542–562; Loewenstamm, "Judicial Executions," 949–950. Execution by burning was standard in the Bible

divine fire as the physical consumption of the body. In the case of Nadav and Avihu, it states: "And a fire went out from the Lord, and devoured them" (Lev 10:2). Regarding Korah's assembly we read, "and a fire came out from the Lord and consumed the two hundred and fifty men who offered the incense" (Num 16:35).[12] This also applies to those other incidents in the desert involving fire: "and the fire of the Lord burned among them, consuming in the outskirts of the camp" (Num 11:1). In Isaiah's prophesy concerning the Assyrian king: "and under his glory shall burn a burning like that of fire . . . and shall consume both soul and body" (Isa 10:16–18). Post-Biblical sources likewise provide descriptions of execution by burning, through human or divine agency, all of which describe the complete burning of the body without a hint of the description that appears in the above Mishnah.[13]

In Roman law, execution by burning was generally practiced in the literal sense (*crematio*). Mommsen provides the following description of burning as practiced in Rome both during and before the period of the Principate: "The criminal was tied to the stake, lifted up, and burned by fire of the wood that was piled at his feet."[14] Hitzig proved that the burning referred to in the Twelve Tablets was meant in the literal sense.[15] Execution by burning was often combined with crucifixion and, like execution by being thrown to the beasts (*damnatio ad bestias*), was intended as a spectacle for the masses.[16] In the provinces, the Romans practiced execution by burning during the persecutions against the Christians and the Jews[17] – a practice likewise attested in rabbinic sources concerning the execution of R. Hanina ben Teradion.[18]

The Mishnah itself cites the testimony of R. Eleazar b. Zadok, according to which burning means the complete burning of the body. The Tosefta contains similar testimony, although the response of the Sages differs:

and in the ancient world for severe sexual offences, primarily incest. See *Anchor Bible Dictionary*: *s.v.* "Punishment and Crime," 554.

12 Cf. Num 17:2 "To remove the fire pans from among the charred remains and scatter the coals abroad."

13 *Jub* 20:4; Josephus, *Ant* 1, 33:4; Josephus, *Wars* XVII.16.14. Regarding the congregation of Korah, Josephus explains that their bodies were burned (*Ant.* IV, 3–4), while regarding the sons of Aaron he writes that the fire began to burn their chests and their faces (ibid., III, 7–8).

14 Mommsen, "The Roman Penal Law," 923. Compare Urbach, "Courts," 45, n. 34.

15 Hitzig, *Zum altesten Strafrecht der Kulturvolker* (Leipzig, 1905), 47, cited in Baumgarten, "Hanging," 12, n. 32. See Grodzynski, "Tortures." Cf. 4 Macc 24–30 regarding the death of Eleazar the Elder; and cf. Krauss, "Bodily Affliction," 88.

16 Koleman, "Fatal Charades," 56; R. Macmullen, "Savagery," 154.

17 Koleman, "Fatal Charades,"; Lieberman, "Persecution," 215, n. 28 and references; Lieberman, "Institutions," 36.

18 *Sifre Deuteronomy* 307 – Translation of Sifre in this book based on *Sifrei – A Tannaitic Commentary on the Book of Deuteronomy*, translated from Hebrew by Reuven Hammer [New Haven: Yale, 1986] 346): "When they apprehended R. Hanina b. Teradion, he was sentenced to burn together with his scroll [of the Law]". See parallels: *y. Ta'an* 4.8 [69a]; *b. Avodah Zarah* 18a. See also Lieberman, "Persecution," 216, n. 28, 218 ff.

R. Eleazar b. Zadok said: I was a child and I was riding on someone's[19] shoulder and I saw a priest's daughter who had committed an act of fornication in Jerusalem, and they surrounded her with bundles of sticks and burned her. They said to him: You were a minor at that time, and a minor cannot testify.[20]

Notably, the only testimony in the Bavli concerning actual execution by burning – and in fact the only testimony concerning execution altogether – similarly contradicts the mishnaic formulation: "Imreta the daughter of Taleh was the fornicating daughter of a priest. Hama[21] b. Tobiah surrounded her with bundles of twigs and burned her."[22]

Scholars have struggled to find an external source from which the Sages might have derived their unusual understanding of execution by burning. For our purposes it is crucial to distinguish between two questions that are often confused. One concerns origin: Was the method of internal burning proposed by the Mishnah a tannaitic innovation or did they borrow it from some other source, whether Jewish or non-Jewish? The second question concerns motivation: why would the Rabbis have deviated from the more straightforward practice of "burning," that is, the complete consumption of the body by fire, one that already existed in the Bible and in the post-Biblical pre-rabbinic tradition? It should be noted that the existence of an earlier source for internal burning, especially a foreign source, would not answer the question concerning motivation. A non-rabbinic parallel would at best provide a partial explanation of the manner in which the Rabbis refashioned the execution of burning, but would not explain their motivation for doing so.

Scholars found a similar form of internal burning in the Alalakh documents, which predate the Mishnah by 1,300 to 1,400 years.[23] A similar description is also found in the Codex Theodosianus, which postdates the Mishnah by a few hundred years.[24] Both sources, but particularly the latter one, have been used extensively by scholars in attempting to resolve the enigmatic description of burning found in the Mishnah.

E. E. Urbach explains the description of burning in the Mishnah in light of his general explanation of the Mishnah's codification of the four modes of execution.[25] He claims that local courts composed of 23 judges were operative

19 In the Erfurt manuscript, it reads "father."

20 *t. San* 9:11 See *b. San* ibid. and *b. San*. 52b.

21 This is the wording found in the Yemenite manuscript. The printed edition reads: *Rav Hama*. The variant versions are recorded here according to the Israeli Institute for Talmud.

22 *b. San* 52b; Mann, "Survey," 205, notes that this is the sole recorded testimony in the Babylonian Talmud of capital punishment. Regarding the law of burning in the Mishnah, R. Joseph said: [these are] "laws for the messianic era". See Alon, *Studies*, 1: 93, n. 28; and cf. *Margaliot Hayam*, vol. 2; 52b s.5.

23 Block 2, line 32; 61, line 18, 19; see Y. Muffs, *Studies in Aramaic Legal Papyri from Alphentine*, Leiden 1969, 194, n. 1; and see Urbach, "Courts," n. 37; Halperin, "Crucifixion and Strangulation," 44; Segal, "Liability," 130, n. 3.

24 Th. (Mommsen), *Theodosiani Libri* XIV: 12 [1905] IX, 24, p. 476.

25 Urbach, "Courts," 64, n. 73; cf. Loewenstamm, "Judicial Executions."

throughout Palestine during the Second Temple period and that they adjudicated capital cases, each in its own way. In Urbach's view, the mishnaic laws of capital punishment are an attempt to unify the divergent traditions of execution that were practiced by these courts. Hence, the mishnaic disputes over the modes of execution are not actually "conflicting opinions" but rather contemporaneous divergent traditions codified into a single composition, the Mishnah. While Urbach concedes that, when it comes to execution by burning, there are no "connecting sources and links," he still postulates that burning originated in one of the aforementioned foreign sources, from which it found its way into one of these local traditions, and from there to the Mishnah.

There are several difficulties in Urbach's approach. First, his claim that there were Jewish courts of 23 with jurisdiction over capital cases rests on a number of questionable assumptions. More recent scholars increasingly contend that such courts did not in fact operate during that period and that, even if they did, it is doubtful that they adjudicated capital cases and implemented executions.[26] The presumption that Jewish courts carried out executions is particularly problematic in light of the policy of the Roman Procurators to arrogate to themselves the exclusive power to adjudicate capital crimes and to execute criminals.[27] Finally, there is no evidence that Jewish capital courts (even if they did exist) operated in compliance with the criminal trial and execution procedures outlined in the Mishnah.[28]

Second, even if we were to make the difficult assumption that execution by burning as described in the Mishnah was practiced by Jewish courts during the Second Temple period, Urbach does not offer any answer as to why the Mishnah would prefer this unusual method, one which differs so radically from that in the Bible and pre-rabbinic Jewish sources. At best, Urbach's supposition that internal burning was also a well-entrenched ancient Jewish tradition might temper this question somewhat. However, he too admits that other courts in the Second Temple period executed through the more simple method of burning the entire body, leaving us without any answer as to why the Mishnah chose one method of burning over another.

In any case, Urbach's initial assumption that internal burning as described in the Mishnah is rooted in a pre-tannaitic Jewish tradition is nearly impossible to accept. There is, quite simply, no evidence from contemporaneous or chronologically adjacent periods for the method of burning depicted in the Mishnah. To the contrary: Biblical and post-Biblical Jewish sources (including the Talmud), as well as sources of Roman Law, refer to burning in the literal sense. Urbach's

[26] Alon, *Studies*, 97 ff and, 129–131; cf. Urbach, above at n. 14. For a survey of the research on this question, see Maclaren, *Power and Politics*, 7–29; and Baumgarten, *Studies*, 162; Sanders, *Judaism*, 419–420, 458–490. For additional studies, see Rabello, *The Legal Condition of the Jews*, 71, n. 287; and compare with Winter, *Trial of Jesus*, 105, 109.

[27] Maclaren, *Power and Politics*; Macmullen, *Savagery*; Koleman, "Fatal Charades," 57.

[28] Maclaren, *Power and Politics*, Sanders, *Judaism*; and see Halperin, "Crucifixion and Strangulation," 36.

contention that internal burning is an ancient Jewish tradition thus relies exclusively on the evidence of the Mishnah. The descriptive formula used by *Mishnah Sanhedrin* to describe execution by burning ("they would bury him up to his knees . . . ") is the typical style used in rabbinic literature for describing what is conceived as normative or idealized behavior and cannot be construed as a description of historical practice.[29] The burning of Imreta bat Taleh mentioned in *b. Sanhedrin* 52b, authentic or not, was apparently based on the method of burning that had always been practiced in Israel. While Urbach can explain this incident as the continuation of a tradition of burning parallel to that found in the Mishnah, it is more probable that it reflected the only normative practice, one which had not been completely rejected even after the tannaitic innovations proposed by the Mishnah.[30]

Furthermore, R. Eleazar b. Zadok testifies that during the Second Temple period the court carried out execution by burning in its literal sense. Such testimony is irreconcilable with the assumption that he was attesting to one of a multiplicity of traditions that existed during the period. Some scholars – relying mainly on the comment of the amoraic sage R. Joseph, "It was a court of Sadducees"[31] – claimed that R. Eleazar was voicing a Sadducean tradition. This explanation is unacceptable for a number of reasons. First, it is implausible that the execution of Imreta bat Taleh, found only in amoraic literature, relied on a Sadducean tradition.[32] Second, had the court to which R. Eleazar b. Zadok referred really been Sadducean, this would have been reflected in the other sages' response.[33] The Sages' use of the word "Court" (*beit din*) in their response indicates that R. Eleazar's testimony related to a "legitimate," albeit non-expert, Pharisaic court. The Tosefta's version refrains completely from impugning the status of this court, choosing instead to impugn R. Eleazar b. Zadok's legal ability to testify. Had the court been Sadducean, it is hard to imagine why we would not hear of this in the tannaitic sources themselves. Furthermore, it is important to note that R. Eleazar's father, R. Zadok, whose name appears in the Mishnah several times testifying as to early traditions,[34] was not suspected of being a Sadducee. As we can see from R. Eleazar's words in the Tosefta (according to the Erfurt manuscript), "I was a child and I was riding on the shoulders of

[29] Fraenkel, "Hermeneutical Problems"; see especially Rosenthal, "Tradition and Innovation."

[30] This testimony supports the thesis of Sanders and many others that *Mishnah Sanhedrin* is theoretical. In other words, it is the intellectual product of the Rabbis, one conceived within the world of the *Beit Midrash*, at a time when they no longer had capital jurisdiction. I shall return to this topic below.

[31] *b. San* 52b; and see Brillel, "Comments," 7. Alon (*Studies*, I:117) contends that the intention is that the court panel at the time consisted primarily of Sadducees, and he refers to Acts 5:34.

[32] As claimed by Urbach, "Courts," 46, n. 35.

[33] The Mishnah did not recoil from indicating halakhot of specifically Sadducean origin. Regarding the mention of Sadducean halakhot in rabbinic literature, see Sussman, "History of the Halakhah," 147.

[34] See *m. Ed* 7:1–4; *m. Pes* 7.2; *t. Nid* 4.3–4 (644).

father," we should understand this tradition in light of other tradions that he received from his father.[35]

Indeed, the mishnaic formulation itself implies that the Rabbis were introducing a previously unknown mode of execution (at least in the Jewish tradition). This is the thrust of the Sages' rebuttal "the court at that time was not well versed in the law," a claim that seems to hint at the extensive changes introduced by the Sages after the destruction of the Temple.[36]

Even Urbach ultimately admits that the supposition that the Alalakh documents or the Codex Theodosianus influenced Jewish tradition is without firm basis. These sources are instructive insofar as they indicate that the Rabbis' formulation of internal burning was not an *ab initio* creation, but they do not give an answer to the second above-mentioned question, that of motivation.

David Halperin gives a possible answer to our question. He rejects Urbach's historical conjecture regarding the ancient custom of internal burning, but rather views the Mishnaic law of burning as the product of a novel, tannaitic interpretation of Scripture. In his view, the source for this rabbinic innovation is Roman law. Relying upon a passage in 1 Maccabees, Halperin claims that during the Hasmonean period Rome and its culture were adulated in the province of Judea.[37] The admiration accorded to Rome and its institutions led to a process whereby Roman legal practices, including methods of execution, were "judaized." Halperin further assumes that the Codex Theodosianus reflects early Roman traditions, and therefore nothing precludes the contention that this was the source of the Mishnaic version of burning.[38] But his explanation does not stand up to close scrutiny. To begin with, his assumption of the antiquity of the practice described in Codex Theodosianus contradicts what we know of the Roman practice of execution by burning during the Second Temple and tannaitic periods – namely, simple burning. Second, at the end of the Second Temple period and during the mishnaic period, Rome was viewed by the Rabbis as the "evil kingdom."[39] Yet Halperin admits that the new method of burning originated in tannaitic times (during the period of R. Eleazar b. Zadok, c. 100 CE) – in other words, during a period in which the Rabbis would have recoiled from anything bearing even a hint of Roman influence.[40] Consequently, it is

[35] See esp. *t. Nid* 4.3 (644).

[36] Büchler, "Capital Punishment," 559, notes; Mantel, *Studies*, 302, 330; Segal, "Liability," 31 n. 11.

[37] 1 Macc 8:1–16 (ed. Kahane), 134–136.

[38] Halperin, "Crucifixion and Strangulation," 40, 41 at nn. 44 and 48.

[39] See, e.g., *t. San.* 9.11 (p. 429); *b. Ber.* 61b; and sources cited by Halperin, "Crucifixion and Strangulation," nn. 14–15. See Lieberman, "Persecution," 216; Alon, *History*, 15; Baumgarten, "Hanging," 12; and see below, section III.1.

[40] Furthermore, the sources dealing with death by the sword demonstrate that the Rabbis attempted to avoid imitating Roman methods of execution, or at least to justify the affinity between mishnaic law and Roman court procedure by means of other arguments. See the dispute between R. Judah and the Sages at *t. San.* 9.11 (p. 429).

unreasonable to assume that the redesigning of execution by burning was motivated by the Roman practice thereof.

In my view, the explanation for the reformulation of the modes of execution must be sought first and foremost in the rabbinic sources themselves. These sources indicate that the Rabbis did not passively transmit received traditions governing judicial procedure and the methods of execution, but rather that they frequently and consistently exercised their own independent and original discretion. Sources indicate that "the commandment of burning" as described in the Mishnah was a rabbinic innovation of the end of the first century or the beginning of the second century CE (i.e., the time of R. Eleazar b. Zadok). This innovation consisted in creating a form of internal burning which avoided external harm to the body. Indeed, the justification cited by Talmudic sources for "internal" as opposed to "external" burning is the objective of avoiding harm to the body. The following section is devoted to this reason, which has generally been disregarded by most of the scholars.

2. "The soul is burned and the body remains intact"

The literary formulation of the passage in the Babylonian Talmud relating to our Mishnah is apparently late, but some of the ideas in this passage are earlier, based on tannaitic texts or on tannaitic traditions directly related to the mishnaic law of burning.[41] The first section in the discussion deals with the source of this mode of execution:

> From whence do we know this [*Rashi* – that this is the mode of burning referred to in the Torah]?
>
> It is derived from the burning of the assembly of Korah: just as the souls were burned but the body remained intact, so too here the soul is burned and the body remains intact. R. Eleazar said: It is derived from the burning of Aaron's sons: just as there the soul burned and the body remained intact, so too here the soul is burned and the body remains intact.[42]

Common to both opinions is the principle underlying the mishnaic law of burning – "the soul burns and the body remains intact." Both the anonymous opinion and that of R. Eleazar derive this principle from an analogy with another use of the word "burning" – although they dispute from which text the procedure of execution by burning is derived. The description of the death of Aaron's sons as the burning of the soul and not the body, and the use of this idea in deriving the manner in which burning as execution is performed, is found in other midrashim as well. Thus, for example, in the *Sifra:*

> "But your brothers, the entire house of Israel, shall bewail the burning which the Lord has kindled" (Lev 10:6). Why does Scripture state "the burning"? So that you may infer: It

[41] According to one view, this passage is of Saboraic origin. See Segal, "Liability," 34, n. 32.
[42] *b. San.* 52b.

says "burning" here, and it says "burning" further on (20:14). Just as "burning" here means the burning of the soul while the body remains intact, so too "burning" stated later on means "burning" of the soul while the body remains intact. – [that is,] burning in the case of the priest's daughter (21:9) and regarding the woman and her mother.[43]

J. N. Epstein has demonstrated the antiquity of the midrashic unit from which this paragraph is quoted.[44] The description of the deaths of Nadav and Avihu as the burning of their soul but not their entire bodies also appears in *Bavli Sanhedrin* 94a:

"And under his body (*kevodo*) shall burn a burning like the burning of fire" (Isa 10:16). R. Yohanan said: the burning would be beneath *khvodo* [his body], but his actual body would not burn. R. Yohanan goes according to his own opinion, for R. Yohanan called his garments "That which honors me (*mekhabdotay*) ...." R. Eleazar said: "Under his *khvodo*" [should be understood] literally, as with the burning of the sons of Aaron: just as there the souls burnt while the body remained intact, so too here it refers to the burning of the soul while the body remains intact.

b. Shabbat 113b records the same dispute, with minor variations but with the addition of the opinion of R. Samuel b. Nahmani:

"And under his body (*kevodo*) shall burn a burning like the burning of fire" (Isa 10:16). R. Yohanan said, "And under his body" – under his body and not his actual body. R. Eleazar said: "And under his body" – under his body, literally. R. Samuel b. Nahmani said: [The phrase] "And under his body" [should be understood] as in the burning of the sons of Aaron; just as there [it refers to] the burning of the soul while the body remains intact, so too here [it refers to] the burning of the soul while the body remains intact.

This dispute concerns the vengeance to be wrought by God upon the armies of the Assyrian King Sennacherib. While the simple sense of the verse in Isaiah 10:16 indicates that *khavod* refers to the Divine Presence, the Rabbis view *kavod* as referring to the soldiers of the Assyrian king. R. Yohanan interprets the word *khavod* as "garment," an interpretation that matches the word that R. Yohanan generally uses to refer to his clothing. According to R. Yohanan "under his *kevodo*" means under his clothes – in other words, the soldier's body was burnt, but not his clothing ("the literal *khevod*"). According to R. Eleazar, *kavod* refers to the body,[45] so that "under *kevodo*" refers to what is beneath the body, that is, his soul or life force. In R. Eleazar's interpretation, the word "literally" relates to the word "under." Accordingly "under *kevodo* – literally" means that the soul alone is burnt.

[43] *Sifra, Mekhilta de-Miluim* 41 (46a).
[44] Epstein, *MLST*, 46.
[45] The term *khevod* in the sense of "body" is found frequently in both Biblical and Talmudic language. See Weinfeld, "God the Creator," 117, n. 71; Fishbane, "Measures of Glory," 62–63.

A parallel to R. Yohanan's homily appears in the Syriac Apocalypse of Baruch (II Baruch) 63:8[46] where, in relation to the Babylonian armies, it reads: "And at that time I burned their bodies within, but I preserved their clothes and arms on the outside so that still more of the mighty works of the Mighty One might be seen, and so that His name might be spoken of throughout the entire earth." It is clear from the context that this was a homily on the verse in Isaiah. Burning of the clothes is avoided in order to magnify the name of God. As we shall observe below, the conflicting Talmudic view provides another explanation for avoiding burning the body. In any case, this source attests to the antiquity of the notion of a miraculous form of burning and, by extension, to the antiquity of the dispute relating to the precise nature of the miracle. The date of this dispute also affects the date ascribed to the midrashim regarding the deaths of Aaron's sons, and their relation to the "commandment of burning" found in the Mishnah.

Another independent source, indirectly related to this dispute, similarly implies that only the souls and not the bodies of Aaron's sons were burned. The previously cited passage in *Bavli Sanhedrin* incorporates the following midrash:

It was taught: Abba Jose b. Dosai says: Two strings of fire issued from the Holy of Holies, and they split into four, and two entered into the nostrils of this one and two into the nostrils of that one, and burned them.[47]

Although the Bavli invokes this baraita in support of the view that the bodies of Nadav and Avihu were burned, but not their clothes, the homily itself clearly presumes that the burning was limited to the soul. The strings of fire penetrate the nose, which is the locus of the soul, as stated in Genesis 2:7: "And he breathed into his nostrils the breath of life." Abba Jose's statement is also based on exegetical considerations. The verse following the death of Aaron's sons states: "So they drew near and carried them in their tunics" (Lev 10:5). There is a certain lack of clarity in this verse, as elucidated in the *Sifra*: "'In their tunics': The tunics of those carrying, or the tunics of those being carried? Scripture says, 'and consumed them' – them, and not their garments."[48] The carrying away of Nadav and Avihu in their tunics after they were burnt poses an exegetical problem: If they were burned, how could they be carried away in tunics which presumably were also burned? The *Sifra* explains this in light of the idea expressed by R. Yohanan regarding the miraculous nature of the death of the Assyrian king's soldiers. In contrast, that of Abba Jose b. Dosai offers a different solution: the burning was internal, that is, restricted to the soul.

In brief, the *Sifra* and the Bavli derive the notion of execution by internal burning through an analogy to the death of Aarons's sons and that of Korah's

[46] Charlesworth, *Pseudepigrapha*, vol. 1, p. 643. Some scholars date this work to the first or second decade of the second century CE. See ibid., 617. This would also appear to be the period of the midrashim relating to the death of Aaron's sons.

[47] *b. San* 52b. In other manuscripts the version is "Dostai," who was a tanna of the last generation. See *y. Bava Kam.* 1.2 [2c]; *Sifra*, Finkelstein, p. 212; *b. Men* 52b.

[48] *Sifra, Mekhilta de-Miluim* 34 (45c-d).

congregation. These sources delineate two principles related to execution by burning: (1) Burning at the hands of heaven means "the soul burns and the body remains intact." The tannaitic midrashim present a unified tradition as to how this divinely imposed penalty was carried out, most of them deriving the notion from the death of Aaron's sons. The conclusion that Aaron's sons were executed through internal burning is required both by the exegetical problem involving the phrase "and they carried them in their tunics," and by ideational bias. This event became the paradigm for the exegesis of all other incidents of burning by Divine agency in the Bible, such as the burning of Korah's congregation, and Sennacherib's soldiers. (2) The manner in which a court is to carry out execution by burning is modeled after burning by the hands of Heaven.

The analogy between how God meted out death by burning and how a human court is instructed to do so is not simply based on a formal linguistic similarity between a halakhic tradition and the words of Scripture. Rather, it is a creative interpretation of the text, one which actually shapes the halakhah. Scholars have noted the differences between the use of the *gezerah shavah* in early rabbinic sources – in halakhic midrashim and other tannaitic sources – and its subsequent use in the amoraic period.[49] During the earlier period these analogies were based upon reason and logic – in other words, upon a substantive connection between different Scriptural passages. By contrast, in the latter period its use became more formal, based exclusively on strict comparisons of words, frequently with no substantive similarity.[50] In our case, the identification of the *gezerah shavah* as early and substantive derives from the following considerations: 1) As noted above, the Mishnah's description of execution by burning was a tannaitic innovation and not an ancient halakhic tradition "searching" for a scriptural source. Moreover, this *gezerah shavah* already appears in tannaitic sources; 2) The *gezerah shavah* is not based on a precise similarity between the words, as is typical in the term's later usage; 3) We will presently see that the other modes of capital punishment were also derived from modes of divinely-imposed death.[51]

Clearly the principle, "The soul burns and the body remains intact," is not based upon a dualistic anthropology. After all, the expression "the soul burns" would be meaningless if the soul were perceived as a distinct spiritual entity in the Platonic sense. Such an entity could not be consumed by either burning or any other means.[52] Rather, in this context the "soul" means the life force of the body. The "burning" of the soul is not the burning of a spiritual substance, but rather of the vital life force found in human beings.

[49] Lieberman, *Hellenism*, 57–58.

[50] At times the latter analogy is based upon a chain of words, which places a far greater distance between the source and its derivative. See, e.g., *Mekhilta de-Rabbi Ishmael, Nezikin* 4, p. 262, as opposed to *b. Eruv* 51a.

[51] See Segal, "Liability," 98–128, 214–217, and a short abstract in Criminal Law; see also Bűchler, "Capital Punishment," 684–689, 696, n. 3.

[52] See also *b. R. H.* 17a.

To summarize, in the Mishnah execution by burning is internal. As distinct from the regular mode of burning attested to by Jewish sources throughout the Biblical and Second Temple periods, the tannaitic formulation of this procedure avoids any injury to the body of the condemned.

What motivated this change? Was it intended to diminish the suffering of the condemned, or was there another reason for preserving the integrity of the body? The former possibility is dubious. As against the opposing claim, that the Mishnaic formulation of execution by burning was crueler than regular burning, Urbach notes that, "Those who claim that the execution of burning as described by the Mishnah was a figment of rabbinic imagination base their argument upon [. . .] the cruelty involved, but they fail to take account of the fact that it is difficult to know whether 'regular' burning was any less cruel."[53] Thus, Urbach's observations and the evidence of the sources tip the scales in favor of the second option. While the Rabbis may have attempted to allay the suffering of the condemned, this cannot be regarded as the controlling principle in their formulation of judicial executions. The distinction between regular burning and internal burning is not in the degree of cruelty or suffering caused, but rather in their attitude toward the body.[54] The details of the laws governing execution by burning clearly demonstrate an overriding concern for ensuring the integrity of the condemned person's body, a concern which cannot be explained solely as a means of reducing suffering. This is underscored by the formative principle of the law of burning – "the soul burns while the body remains intact."

As we shall observe later in this chapter, the tannaitic formulation of execution by burning was part of a general refashioning of all the modes of judicial executions, one whose goal was to minimize damage to the condemned person's body. The notion that judicial execution should avoid bodily damage was inspired by the Rabbis' interpretation of divinely imposed execution and is particularly noticeable in execution by strangulation.

III. STRANGULATION

1. "The Commandment of Strangulation"

The Mishnah provides the following description of execution by strangulation:

> The commandment of those condemned to strangulation: They would bury him into dung up to his knees and place a hard cloth within a soft cloth, and wind it around his neck. This one would pull his way and this one would pull his way until his soul would depart.[55]

[53] Urbach, "Courts," 46; cf. Goldberg, "Double Derashot," 117.

[54] See the continuation of the passage in *b. San* 52a.

[55] *m. San* 7.3. Regarding the directions of pulling, on either side of the man being executed, see *y. San* 7.4 [24b].

Just as in burning, if not even more so, the body of the condemned remains unharmed. The "commandment of strangulation" was designed to cause the "departure of the soul" alone. As noted above, except for its conclusion, this Mishnah merely repeats the preparatory stage for death by burning.[56]

Execution by strangulation poses various difficulties, the most prominent of which is its absence from Scripture.[57] That this practice was not prescribed in the Torah is noted in both Talmuds: "Strangulation is not mentioned" (*y. San* 7.4); "From whence do we know that there is [death penalty by] strangulation at all?" (*b. San* 53a). The difficulty is aggravated when we realize that, according to the Rabbis, strangulation is the default mode of execution, applicable to all those offences for which the Torah does not prescribe a particular method of execution. This is summarized by *Sifre Deuteronomy*: "'That man shall die' (Deut 17:12): the death penalty indicated in the Torah without further specification refers to strangulation."[58]

The similarity between the details of strangulation and those of burning invites the same questions as were asked above: 1) Was this form of execution invented by the Sages, or does it have antecedents, either Jewish or foreign?; 2) Why did the Sages include the commandment of strangulation among the four modes of judicial execution and, particularly, as the default one? An answer to the former question will not necessarily resolve the latter.

In Urbach's view, death by strangulation is rooted in hanging, as their consequences are similar.[59] Hanging was the Roman method of execution, and it was adopted by the Jews for those executions whose mode was not specified in the Torah. Urbach presumes that execution by strangulation was practiced by Jews and meted out by local courts, alongside hanging (and other modes of execution), as part of the Sages' "unifying tendency," and was included as such in the Mishnah.

Again, Urbach's theory is difficult to accept. First of all, it is doubtful whether strangulation can be viewed as a replacement for, or development of, hanging. The form of hanging ascribed by Talmudic sources to the Romans ("as the kingdom does"), which the tannaim distinguished from their form of hanging, was apparently crucifixion.[60] Second, there is no substantial evidence that

56 See Rashi's commentary, *b. San* 52a, *s.v. kasha* ("this raises a difficulty"). Rashi's comments relate to execution by burning, but are equally applicable to strangulation. See also the commentary of R. Levi b. Gershon to 2 Sam 21.

57 Loewenstamm, "Judicial Executions," 950. This question has been discussed at length. See studies referred to by Halperin, "Crucifixion and Strangulation"; Baumgarten, "Hanging."

58 *Sifre Deuteronomy* 155 (p. 191); cf. ibid., 178 (p. 203) and many other parallels. For a list of the offences punishable by strangulation, see *m. San* 1.11.

59 Urbach, "Courts," 45.

60 *m. San* 6.4; *b. San.* 46a; *Sifre Deuteronomy* 221 (p. 254); and see M. Hengel, *Crucifixion*, 84–85; Fitzmyer, "Crucifixion"; Halperin, "Crucifixion and Strangulation." It should be noted that crucifixion does cause death by strangulation: the horizontal positioning of the condemned person's hands (usually by tying them up) causes a gradual weakening of the chest muscles and of the diaphragm and the condemned person is slowly asphyxiated. See Zias and Sekeles, "The

execution by strangulation as described in this Mishnah was actually practiced anywhere at all.[61] Third, and for our purposes most important, Urbach's thesis again provides no answer to our second question.[62]

J. Baumgarten likewise posits that strangulation already existed as a form of execution prior to the tannaitic period. He supports this hypothesis with evidence from the writings of Josephus, who relates that Herod executed Hyrcanus II by strangulation.[63] According to Baumgarten, the Jews copied strangulation, as they did hanging, from the Romans.[64] But Baumgarten's theory is also fraught with difficulty. First, his reliance on Herod's behavior as a source for the mishnaic law of strangulation is dubious, because Josephus does not describe the actual method of execution.[65] Furthermore, the strangulation of Hyrcanus is not depicted as a judicial procedure, nor as having been otherwise legally sanctioned, but rather as a political assassination.[66] This belies any attempt to connect this source with strangulation as described in the Mishnah. Hence, the only conclusion that can be drawn from this story, even tentatively, is that the Rabbis were familiar with death by strangulation. The second difficulty with Baumgarten's theory is that existing sources indicate that the Romans did not perform strangulation by hand[67] but, as stated, by means of crucifixion.[68] Crucifixion was regarded as a particularly cruel and degrading form of execution,[69] both because of its protracted and excruciatingly painful nature, and because those who were crucified (like those who were hanged) were not subsequently buried. Rather, their bodies were left hanging as carrion for the birds

Crucified Man." However, the forms of crucifixion differed in particulars from place to place. See Hengel, *Crucifixion*, 25.

61 See Winter, *Trial of Jesus*, 102; Halperin, "Crucifixion and Strangulation," 40, 46.

62 See *supra*, section II.1.

63 *Ant* XV 3.9 (ll. 175–180).

64 Baumgarten, "Hanging," 475, n. 13; idem, "Hanging and Treason¸" 13. Baumgarten assumes that the Romans practiced strangulation during the Republican period, and that it was "converted" by the Hasmoneans during the period in which the residents of Judea had greater admiration for Rome (see 1 Macc 8).

65 In *Wars* 1. 22 (l. 433) and in *Ant*, ibid. (l. 175) there is no mention at all of the mode of execution. See comments of editor (Marcus), ibid., 84 note a.

66 In *Wars* 1.551 and in *Ant* XVI.394, Herod is said to have murdered his two sons, Alexander and Aristobulus, by strangulation. See Winter, *Trial of Jesus*, 102, n. 21. In *Wars* XV.4–8 and *Ant* XVI.6.480, Herod is saddled with another political execution – that of Antigonus – by decapitation.

67 The Roman source relied upon by Baumgarten is taken from Salustius Cripus (35 BCE, 55 *Ctilina*). However, the context there is strangulation that breaks the neck (*strangulatio, laqueo gulam fregere*), which apparently refers to hanging.

68 See Garnsey, "Legal Privilege"; Macmullen, "Savagery"; Koleman, "Fatal Charades." See also Philo, *The Special Laws*, III.149–152. Regarding the Talmudic sources, see later.

69 Regarding the cruelty involved in crucifixion, see Koleman, "Fatal Charades," 53; Hengel, *Crucifixion*, 22. See also note 60 (this chapter). Hanging too was regarded as a cruel and demeaning form of execution. See Lieberman, "After Life," 517; Liebermann, "Sins and Their Punishments"; Himmelfarb, *Tours*, 82–92.

and wild beasts.[70] Finally, Baumgarten's thesis does not provide an answer to the second question posited above, for even were we to accept his explanation for the source of the law of strangulation, it does not explain how or why this form of execution was accepted as the default mode of execution in tannaitic law.

David Halperin maintains that strangulation has its roots in crucifixion, which he claims was an accepted Jewish mode of execution during the Second Temple period. In pre-tannaitic tradition the hanging referred to in Deuteronomy 21:22, "If a man is guilty of a capital offense and is put to death and you hang him on a tree" was interpreted as a method of execution, and not as occurring postmortem.[71] According to this view, the unspecified form of death penalty in the Bible is strangulation which, under Roman influence, was understood as crucifixion.[72] Halperin argues that the protracted and agonizing method of crucifixion was subsequently amended by the sages of Yavneh to that of strangulation by hand, which was much faster and more humane.[73] He further conjectures that, in addition to the humanitarian consideration, the impetus for change derived from the Rabbis' hatred of the Romans.[74]

Halperin's claim that the mishnaic description of death by strangulation only originated at the end of the first century CE is sound. We have no record of this kind of judicial execution being practiced by Jewish courts during the Second Temple period. Moreover, there are several pre-tannaitic Jewish sources – *Pesher Nahum*, the *Temple Scroll*, the Targum to Ruth 1:17, and various testimonies embedded in Talmudic literature – that indicate that strangulation was performed by hanging.[75] The silence of these sources regarding the mishnaic form of strangulation and the evidence they provide regarding hanging strengthen the conclusion that the form of strangulation described in the Mishnah did not exist prior to the tannaitic period. Even if we accept the

[70] Loewenstamm, "Judicial Executions." For traces of this custom in Middle Assyrian sources, see references of Segal, "Liability," 118, and especially 159, n. 134. The prohibition on burying crucified/hanged corpses has been dealt with extensively. See esp. Lieberman, "After Life," 57.111 and his bibliography; Koleman, "Fatal Charades," 56; Hengel, *Crucifixion*, 57.

[71] For cases of hanging in the Bible, see Loewenstamm, "Impalement"; cf. Yadin, *Pesher Nahum*; Segal, "Liability," 118, and cf. Cohn, "Hanging"; Baumgarten, "Hanging"; Havlin, "Translation," 21. Subsequent scholars note that all of the Biblical descriptions of hanging are descriptions of acts performed by foreign kingdoms.

[72] Halperin, "Crucifixion and Strangulation," and references in n. 1; cf. Fitzmyer, "Crucifixion"; Hengel, *Crucifixion*, 84.

[73] Ibid., 38. The transformation of strangulation, in his opinion, was parallel to the transformation of burning. In his view (40), remnants of execution by crucifixion may be found in the tannaitic law of hanging.

[74] Hengel takes a similar approach, ibid., 85. Yadin (*Pesher Nahum*) makes a similar claim regarding hanging. It must be noted that Halperin explains the mishnaic law of hanging (ibid., p. 44) as being specifically the result of Roman influence (see *supra*, Section II.1).

[75] For a discussion of these sources and the questions they raised in scholarly literature, see Lorberbaum, *Zelem*, 200, n. 116.

supposition that strangulation developed from hanging, it was nonetheless a substantial innovation. Significantly, that strangulation was an innovation of this period is corroborated by our findings: namely, that the Mishnah's mode of burning and stoning as well as postmortem hanging were likewise tannaitic innovations (see below).

Halperin's thesis is flawed primarily by its failure to provide a satisfactory explanation for this change. Hatred for Rome significantly predates the generation of Yavneh, and it is difficult to see it as the reason for such a radical revamping of the halakhah, particularly as this explanation lacks support in tannaitic sources. Moreover, the Rabbis refer to decapitation as execution "as the kingdom (i.e., Rome) does" (*m. San* 7.3), implying that they did not think that the Romans executed by strangulation.[76] Regarding Halperin's claim that the Rabbis created this mode of execution due to their desire to ameliorate suffering: although this notion is expressed in Talmudic sources, it is refuted by another approach, which may reasonably be presumed to have provided the foundation for execution by strangulation.[77] Furthermore, death by sword (i.e., decapitation) was regarded as a less painful form of death.[78] Finally, we would have expected humanitarian considerations to lead to similar changes in the other forms of capital punishment, yet a general assessment of the innovations introduced in the forms of capital punishment, both in relation to the Biblical methods of execution and in relation to other methods practiced at that time, suggests that this was not the case. More than the desire to allay the suffering of the condemned, they expressed the wish to preserve the bodily integrity of the condemned during the execution process. Finally, Halperin's theory does not explain the choice of strangulation as the default method of execution. His suggestion that hanging was the "unspecified form of death penalty" in pre-tannaitic halakhah, which ultimately evolved into strangulation, is unconvincing.[79]

The theories discussed thus far can be categorized as "historical," for they assume that capital punishment in general and strangulation in particular were the product of historical circumstances rather than innovative rabbinic interpretations. According to this approach, focusing on "influences" and "sources" suffices for an understanding of the subject under examination.

76 The word "kingdom" apparently refers to Rome. See "Capital Punishment," 692; Krauss, "Bodily Affliction," 104; Urbach, "Courts," 54; Baumgarten, "Hanging and Treason"; Halperin, "Crucifixion and Strangulation," 34.

77 *b. San.* 52b and parallels.

78 See Winter, *Trial of Jesus*, 104. The Romans relegated the punishment of decapitation by sword to the upper classes, as this was considered less painful and humiliating. See Garnsey, "Legal Privilege," 20, n. 72; Koleman, "Fatal Charades," 55.

79 Many scholars surmise that during the pre-tannaitic period hanging was used for traitors. See Yadin, *The Temple Scroll* 1, 280; Baumgarten, "Hanging and Treason"; Schwartz, "The Cursed." Segal ("Liability," 119–122) extends applicability of this form of execution to any offence perceived as a rebellion against the kingdom.

However, it is precisely these historical findings that lead to the conclusion that execution by strangulation represented a decisive change in halakhah, and therefore requires a different path of explanation. After all, what had hitherto been considered the harshest method of execution (crucifixion and even hanging) subsequently became the most lenient (strangulation)[80]; that form of execution that was considered to be particularly maiming became a death divested of any trace of disfigurement. It is the change, therefore, and not its "source," that demands explanation.

In addition, when compared with Biblical law, the tannaitic law of strangulation and its recognition as the default mode of execution represents a significant innovation, and not only due to the absence of strangulation in the Torah. The default mode of execution in the Bible seems to have been stoning.[81] In its Biblical formulation stoning was a particularly cruel and mutilating form of execution. Thus, even taking into consideration the change from the literal sense of Scripture, the rabbinic form of strangulation demands explanation.

Another methodological problem with the approaches described above is that they tend to ignore the reasons provided by the tannaitic sources themselves, or to dismiss them as post factum explanations.[82] But in light of our conclusion that these forms of execution were rabbinic innovations, these justifications demand serious consideration. The central explanation provided in rabbinic literature for the manner of conducting strangulation proves our contention that it was deliberately fashioned in order to prevent disfigurement of the condemned's body. These sources are discussed in the following section.

2. "Death that leaves no mark"

Mekhilta de-Rabbi Ishmael cites a number of opinions regarding the reason for death by strangulation:

> "Shall surely be put to death" (Lev 20:10) – by strangulation. You interpret this to mean by strangulation, but perhaps it means by one of the other forms of death penalty mentioned in the Torah? You should say: this is a rule of the Torah – any death penalty mentioned in the Torah whose mode is unspecified, you may not extend its meaning to include a harsher mode, but rather you must confine it to the most lenient mode – these are the words of R. Josiah.
>
> R. Jonathan says: Not because it [strangulation] is the most lenient form of death penalty, but because the manner of death penalty mentioned here is unspecified and every death penalty which is unspecified means death penalty by strangulation.

80 *m. San.* 7.1; *t. San* 12.5 (p. 433); *t. Ark* 2.10 (p. 544); *b. San.* 49b-50a; *y. San* 7.2 (24b).

81 See Blinzer, "Stoning," 148–149; Loewenstamm, "Judicial Executions," 947.

82 See Urbach, *The Halakhah*, 82–83; Halperin, "Crucifixion and Strangulation," 35–36; Segal, "Liability," 125. On the other hand, Talmudic sources contain no hint of the explanations proposed by scholars. For example, I am not aware of any Talmudic source that connects execution by strangulation to hanging.

Rabbi says: It must be like a death penalty at the hands of Heaven. Just as death penalty at the hands of Heaven is a death penalty that leaves no mark, so too death penalty at the hand of man is one that leaves no mark.[83]

Although the immediate context of this debate is the punishment of the adulterer in Leviticus 20:10, it is actually a much broader dispute concerning the reason for punishment by strangulation, which applied to all unspecified forms of execution in the Torah. Indeed, in other sources the same dispute appears with respect to other Biblical capital offences regarding which no specific form of execution is prescribed,[84] and in the Yerushalmi (*y. San* 7.1, 4) it appears without reference to any specific offence.

According to R. Josiah, in cases of an "unspecified form of death penalty," the correct interpretation is that which is most lenient. As according to the Sages strangulation is the most lenient of the four modes of capital punishment (*m. San.* 7.1), it is also the default method of execution. R. Josiah does not explain in what way strangulation is the most lenient method.[85] Conceivably the phrase "you may not extend it" means that you may not prolong it. According to this interpretation, strangulation is the speediest method of execution, and therefore involves the least amount of suffering.[86] However, it would appear that the word *lemoshkha* ("to extend it") is better understood as "to pull" – that is, toward severity – meaning that it is forbidden to prescribe a harsher method of execution than necessary. If so, R. Josiah does not explain why or how strangulation is considered the most lenient possible method of execution. The Talmud questions his interpretation: "But according to R. Josiah, how do we know that there is death by strangulation at all; perhaps the sword is meant?" According to the Talmud, R. Josiah's rationale does not explain the grounds for the formulation of a new form of execution not mentioned in the Torah. At most it would justify choosing the most lenient form of execution already mentioned in the Torah – namely, the sword. The Talmud's question might also imply that R. Josiah's desire to choose the most lenient mode of execution does not justify the promulgation of a new method in as much as death by the sword is no more torturous than death by strangulation, and perhaps even less so.

R. Jonathan dismisses R. Josiah's explanation for execution by strangulation. In his view the law of strangulation is not rooted in the fact that strangulation is more lenient or that the Torah's exegetical approach demands leniency. Rather,

[83] *Mekhilta de-Rabbi Ishmael, Nezikin* 5 (Lauterpacht, vol. 2, p. 43). See the many parallels later.

[84] *Mekhilta de-Rabbi Ishmael* (pp. 45–46) regarding the punishment of the kidnapper who sells his victim (Exod 21:15); and the baraita in *b. San* 52b regarding the adulterer.

[85] See *m. San* 7.1.

[86] In *Mekhilta de-Rashbi*, 21.15 (p. 172) and in the *Midrash ha-Gadol*, *Exod* 21:15 (p. 473), this rationale is linked to "'Love thy neighbor as yourself' – Choose an easy death for him." If the purpose of the principle is to ameliorate the convict's suffering, then it may provide support for the possibility suggested above, but the intention of this principle is not unequivocal, because "easy death" may also refers to a mutilation-free death. See *b. San* 48b.

it derives from the tradition "every death penalty which is unspecified is strangulation." Rabbi [Judah the Prince], whose opinion follows, seems to explain the origin of this tradition[87]: "[This should be] like death at the hands of Heaven; just as death at the hands of Heaven leaves no mark, so too death that is stated here [at the hands of man] is death that leaves no mark." Rabbi's comments are not presented in the *Mekhilta* as an explanation to R. Jonathan and, for reasons that I will explain below, it may be inferred that Rabbi was offering an independent opinion. R. Jonathan and R. Josiah were contemporaries of R. Meir, and preceded Rabbi by one generation.[88] If R. Jonathan's statement is indeed based on the reason provided by Rabbi, then the latter was expressing an earlier tradition.

Rabbi's view emphasizes two interrelated points: (a) capital punishment implemented by a human court may not leave a mark on the body of the condemned[89]; (b) capital punishment must imitate execution at the hands of Heaven: just as there is no mark in the latter, so too the former may not leave any mark.

Rabbi Judah ha-Nasi does not provide any information as to where the Torah mentions death at the hands of Heaven as leaving no mark. Rashi illustrates the principle from the death of Onan: " 'And he killed him also' (Gen 38:10) – this implies an unspecified death penalty at human hands." Other commentators interpret the absence of a mark as a reference to death by natural causes, which does not generally leave any mark.[90] However, in Talmudic literature the words "death at the hands of heaven" usually indicates a death initiated by Heaven as a result of sin.[91] This interpretation is supported by the parallel between strangulation and burning, which, it will be recalled, was derived from the unnatural death of the sons of Aaron at the hands of Heaven.

Rabbi's words are formulated as a general principal, applicable to any execution performed by men[92] – in other words, to all forms of capital punishment. Accordingly, there is no need to consider them exclusively in the context of R. Jonathan's comments or the law of strangulation. And in fact, the next section of the above-cited *Mekhilta* passage reads: "Rabbi says: Like death at the hands of Heaven ... so too death at the hands of man is a death that leaves no mark. From this they inferred: 'The commandment concerning strangulation – they would lower him ... until his soul departs. This is the procedure of

[87] This explanation is given in *b. San* 53a. See loc cit. Rashi, *s.v. eina ela henek*.

[88] R. Jonathan and R. Josiah were students of R. Ishmael, and contemporaries of R. Meir. See Albeck, *Introduction to the Mishnah*, 230.

[89] Rashi, *supra, s.v. ein bah roshem;* See also *Aruch ha-Shalem* 7, 308, *s.v. roshem*; cf. references in Segal, "Liability," 167, n. 175.

[90] *Aruch ha-Shalem*, ibid., and also in Halbertal, Revolutions, p. 155.

[91] See, e.g., *m. San* 9.6; *Mekhilta de-Rabbi Ishmael , Nezikin*, 10, p. 285; *b. Ket* 36b, and parallel texts. Regarding the term "laws of heaven," see *m. Bava Kam*. 7.4; and Alon, *Studies*, I:163, n. 61.

[92] See the wording of Rabbi's comment in *Sifra, Kedoshim* 10.9 (11) (92a).

strangulation.' "[93] This source distinguishes between the words of Rabbi, which are presented as a general principle, and their practical application to capital punishments in general and execution by strangulation in particular. The phrase "from this they inferred," frequently used in halakhic midrashim, links apodictic laws (often from the Mishnah) with midrashim on Biblical verses.[94] Admittedly, it is not always the case that the law was actually derived from a Biblical verse. Nevertheless, in the case at hand, there is a clear nexus between Rabbi's general principle, based on a midrashic comparison between death at the hands of Heaven and death by a human court, and the formulation of "the procedure of strangulation."

What remains obscure, however, is the scriptural basis for the general rule that death at the hands of Heaven leaves no mark. This rule would seem to be rooted in an independent conception which R. Judah ha-Nasi appended to the Torah, one which dictated the structuring of the law of strangulation as well as the other forms of capital punishment. We will deal with its reasons and foundations later.

Apparently, Rabbi's comments are based on an earlier tradition, because "the procedure of strangulation" preceded Rabbi by at least one generation. In the absence of evidence to the contrary, there is no reason not to accept this principle as the rationale underlying the tannaitic reformulation of capital punishment. After all, Rabbi was the editor of the Mishnah and was known to usually incorporate R. Akiva's views, presenting them as anonymous and unanimous. It would be less reasonable to assume that the congruity between Rabbi's principle and the formulation of capital punishment in the Mishnah is incidental, or that it reflects his own personal view.

The similarity between the rabbinic refashioning of execution by burning is clearly similar to their formulation of execution by strangulation. As we have seen, the Rabbis refashioned burning in accordance with the principle "the soul burns and the body remains intact." Here, too, the court emulates the divine execution meted out to Aaron's sons, which according to the midrash left no mark on their bodies. This parallel strengthens the claim that Rabbi expressed a principle that applied to capital punishment in general and not just to strangulation. In fact, in cognizance of the similarity between the two forms of death, the Bavli asks: "and perhaps it is burning"? In other words, why must the "unspecified execution" necessarily be strangulation? Why might it not be burning, which is of Biblical origin and which was also formulated in accordance with Rabbi's rule that it be modeled upon "death at the hands of Heaven."[95]

[93] Compare *Mekhilta de-Rabbi Ishmael*, ibid., (p. 267); and *Sifra, Kedoshim* 10.9 (11) (92a).

[94] For a list of the occurrences of "From this they inferred" see Bacher, *Tradition*, 171–192; and cf. Epstein, *Introduction*, 728 ff; Kahana, "The School of Rabbi," 71.

[95] The notion that strangulation leaves no mark is also found in a homily of *Tanna de-vei Manasseh*: "Every death penalty decreed for Noachides is by strangulation. [The second occurrence of the phrase] 'in man' is appended to the latter half of the verse, such that [the verse] is interpreted as follows: '[Whoever sheds the blood of man] within that man [the murderer], shall his blood be

In summary: execution by strangulation avoids bodily damage to the condemned more than any other mode of execution, a principle clearly expressed in Rabbi's dictum, "death that leaves no mark." Strangulation's status as the default mode of execution in rabbinic halakhah, notwithstanding its total absence from the Bible, indicates the decisive weight conferred by the tannaim to the preservation of bodily integrity. The Rabbis rejected stoning, burning, and the sword as methods of executions in those cases in which the Torah did not specify a mode of execution because those modes, particularly in the Biblical sense, are more disfiguring to the body. Preservation of the body was also a guiding principle in the rabbinic reinterpretation of the three other Biblical forms of execution, as we saw with respect to death by burning. The difficulty is that, in order to implement the principle of respect for bodily integrity with regard to those capital punishments explicitly mentioned in the Torah, the Rabbis needed to refashion them completely so as to limit injury to the body insofar as possible. In contrast, in those cases where the Torah did not specify any mode of execution, the principle could be applied in a purer sense by the introduction of death by strangulation which leaves no mark at all.

However, this truncated hanging procedure is not merely a symbolic gesture expressing an abstract idea or value. The act of removing the corpse also had a substantial dimension, for, being premised as it is on the conception of the image, it was designed to prevent harm to God, who is present in the human body, even the body of a criminal. Removing the corpse from the tree effectively neutralized the hanging itself, constituting a kind of preventive theurgy. The passage began, therefore, with negative theurgy: ([cursing "the 'Name (of God) by invoking the Name (of God)'")] which necessitated hanging the blasphemer. However, but due to the fear of (the additional) negative theurgy involved therein, it concludes

shed' (Gen 9:6). What shedding of blood occurs within a man's body? We say: This is strangulation." *b. San* 57b; cf. ibid., 71b and 51b; *y. Kidd* 1.1 (58c). A similar interpretation was offered by Ibn Ezra to the words "his bloodguilt is in him" (Lev 20:9): "This is similar to 'his blood will be on his head' (Josh 2:19), for [in the case of] both those who are stoned and those who are strangled, their blood remains within them." We will observe below that stoning too was formulated so as to minimize physical marks. The principle that execution at the hands of Heaven leaves no mark and its connection to the law of strangulation sheds light on other Talmudic sources, some of them aggadic. *Mishnah Sanhedrin* 11.5 states: "A false prophet, and one who prophesies that which he has not heard or was not told to him, is executed by man [in other words, by strangulation; (see *m. San* 11.1), And also "'he who prophesies in the name of an idol'," *m. San* 11:6], but one who suppresses his prophecy, or disregards the words of a prophet, or a prophet who transgresses his own word – his death is at the hands of Heaven." *Tosefta Sanhedrin* illustrates this Mishnah: "'He who suppresses his prophecy' – like Jonah the son of Amitai. 'And he who disregards the words of the prophet' – like Micah. 'And he who transgresses his own word' – like Ido," – *t. San* 14.15 (p. 437); see parallels in *Sifre Deuteronomy* 177 (pp. 221–222); *b. San* 89a; *y. San* 30b. For Biblical examples of false prophets liable for execution, see *Tosefta*, ibid., 14. Apart from using these Scriptural characters as examples of prophetic transgressions, for which the punishment is given to divine discretion, the midrash further connects their history and their fate to death at the hands of Heaven, which leaves no mark. See also Aptowitzer, "Observations," 55–66.

with the preventative theurgy of "one ties and another unties." This claim will be elucidated in the following chapter.

IV. DECAPITATION

Decapitation (*hereg*)[96] was an exception among the four rabbinic modes of execution:

> The commandment of decapitation: They would cut off his head with a sword, in the way that the [Roman] kingdom does. R. Judah says: This is a disgrace (*nivul*).[97] Rather they place his head on a block and chop it off with an axe. They said to him: No death is more disgraceful than this.[98]

In contrast to burning and strangulation, discussed above, and stoning and hanging, to be discussed below, decapitation severely disfigures the body. The exceptional nature of execution by the sword demands an explanation as to why the Rabbis would deviate from their own principle, "death at the hands of man leaves no mark."

1. Sword or Axe: Fashioning Execution by Decapitation

In addition to *Mishnah Sanhedrin*, the dispute between R. Judah and the other sages regarding the "commandment of decapitation" is recorded in several other Talmudic sources.[99] Prima facie, the formulation of the dispute in these sources differs from that in the Mishnah.[100] For our purposes however, the question of the original version is secondary, because all of the sources indicate that *hereg* is decapitation, whether by sword or axe; performed with either instrument, this form of execution is exceptional and thus requires an explanation.

First, we should note that R. Judah and the other rabbis do not dispute that the Torah mandates execution by decapitation, but only as to the manner of its implementation. The Sages prefer decapitation with a sword because in their view it is less disgraceful than other methods of decapitation, whereas R. Judah rejects this method, although not necessarily because it produces greater disfigurement. He in fact prefers the axe, despite the fact that its maiming capacity seems to be greater. He objects to execution by the sword is because it is the Roman method of decapitation.[101] This view emerges with even greater clarity from the version of

[96] The word *hereg* in the Bible and in Talmudic literature is a generic term for capital punishment (see, e.g., Deut 13:10–11) and is occasionally exchanged by the Rabbis with death by sword. See Segal, *Punishment*, 147, note 9; Krauss, "Bodily Affliction, 96, 104–105.

[97] The word "*nivul*" can mean either disgraceful or disfiguring. Indeed, this seems to be the play on words occurring in this debate.

[98] *m. San* 7.3.

[99] See *b. San* 52b; *t. San*. 9.11 (429–430); *y. San* 7.3 (24b).

[100] For discussion of these sources and the relation between them and the Mishnah, see Lorberbaum, "Blood," Appendix.

[101] See *Sifra, Aharei Mot*, 9.8 (ed. Finkelstein, p. 370).

his words found in the Tosefta and the tannaitic sources recorded in the two Talmuds.[102] According to these sources, the Sages reply to R. Judah: "There is no death more disgraceful than this [the axe; i.e, because it is so disfiguring]," to which he responds: "I also know that this death is disgraceful, but what can I do, for the Torah states: 'You shall not follow their laws' (Lev 18:3)."[103]

The Mishnaic term, "as the kingdom does," referring to Roman custom, is not indicative of the source of execution by decapitation, as some scholars have supposed, but is only a description of the means of its implementation. This claim is supported by a number of considerations. First, the Mishnah does not cite the source of the other forms of capital punishment, sufficing with their description alone. It is difficult to assume that decapitation is exceptional in this regard. Second, the claim in modern scholarship that decapitation by the sword stems from Roman law is based primarily on its status as the punishment for the offense of murder, a crime which would have fallen under Roman jurisdiction. However, the Romans did not in fact execute murderers by the sword[104]; moreover, they perceived death by sword as "honorable," and designated it for the upper class (*honestiores*).[105] Thus the question remains: From where did the tannaim derive the law of decapitation?

2. The Sword and the Prohibition of Murder

The scriptural basis for decapitation (*hereg*), as distinct from other types of capital punishment, is derived in tannaitic sources from the transgressions to which this punishment applies: namely the "apostate city" (*'ir ha-nidahat*) and homicide.[106] The law applying to a city whose residents have been enticed into idolatry is articulated in the verse "Put the inhabitants of that town to the sword" (Deut 13:16). The punishment prescribed here is unique among Biblical death penalties in that it bears greater resemblance to war than it does to a judicially prescribed execution.[107] In fact, those Biblical and Talmudic sources that grant the king rather than a judge the authority to deem a city an "apostate city" suggests that war is a more apposite category for this mode of punishment.[108] Thus, the sole offense to which execution by decapitation truly applies is homicide.

[102] See Lorberbaum, "Blood," Appendix.
[103] This is the formulation in the baraita in *b. San* 52b; see Lorberbaum, "Blood," 433 ff.
[104] See Macmullen, "Savagery," 148, 154 and the references collected in note 1. Macmullen cites burning (for a slave who murders his master), casting into a pit of wild animals (for murder by poisoning) and poisoning (for cases of unintentional murder or death caused by negligence), as the modes of capital punishment for murder.
[105] Mommsen, "The Roman Penal Law," 927; P. Garnsey, "Harshened Penal Laws"; and Koleman, "Fatal Charades," 55.
[106] *m. San* 9:1.
[107] Halbertal, *Revolutions*, 123.
[108] Josh 11:11; cf. Albeck, *Mishnah, Nezikin* (*San.* 9.1) 453.

3. "And the land can have no expiation for blood that is shed on it, except by the blood of him who shed it" (Numbers 35:33): On Blood in the Bible

Before investigating further Talmudic sources related to the form of execution meted out to the murderer, we must first turn to the Bible. The Biblical punishment for bloodshed was first promulgated in the postdiluvian period, where it is connected with legislation regarding the shedding of blood.[109] As part of God's covenant with Noah, he permits him to eat animal flesh (Gen 9:3) but proscribes consuming blood: "You must not, however, eat flesh with its life-blood" (ibid., 9:4). The transgression regarding human blood is more severe: "But for your own life-blood I will require a reckoning: I will require it of every beast; of man, too, will I require a reckoning for human life, of every man for that of his fellow man" (ibid., 9:5). This "reckoning" is elucidated in the subsequent verse: "Whoever sheds the blood of man, by man shall his blood be shed." A similar punishment is mentioned in Lev 17:11–14 regarding the consumption of animal blood: "It is the blood, as life, that expiates . . . therefore I say to the children of Israel: You shall not partake of the blood of any flesh, for the life of all flesh is its blood. Anyone who partakes of it shall be cut off." Numbers 35, which deals with various matters pertaining to bloodshed, concludes by stating, "And the land can have no expiation for blood that is shed on it except by the blood of him who shed it" (Num 35: 33).

These verses, which are classified as belonging to the Pentateuch's priestly source (P), identify the animal's soul with its blood.[110] As a result of blood's substantive-animistic features, P established certain obligations and prohibitions concerning it, whose violation requires expiation. Expiation is a kind of an act of purification that utilizes the purifying characteristics of blood.[111] The most severe of these offenses is called "bloodshed" and, in view of the conception that identifies blood with the soul (*nefesh*), this phrase should not be understood metaphorically but as a literal depiction of the act of killing. The spilled blood cries out for revenge-redemption-expiation[112] (all of which are echoed in the Biblical conception of blood), which can only be "quieted" by shedding the blood of the murderer. The demand to expiate the blood of the victim with the murderer's blood and none other is a magical-ritual objectification of the feeling

[109] See T. Frymer-Kensky, "The Atrahasis". She notes that prior to the flood murderers did not receive capital punishments; on the contrary, Cain, the first murderer, was given special protection against blood-avengers (Gen 4:15). See also the matter of Lemech (Gen 5:24).

[110] Knohl, *Sanctuary of Silence*, 94, 98.

[111] On blood as possessing demonic (and miasmatic) characteristics, on the one hand, and as "purifying matter," on the other hand, see Milgrom, "*Hattat* Sacrifice," 1–8; compare with Brichto, "Blood and Atonement."

[112] See Gen 4:10: "Hearken, your brother's blood cries out to me from the ground" and Gen 37:22, 42:22; see also *Midrash ha-Gadol, Exod* p. 427: "'Do not murder' – Do not permit [the shedding of] blood, so that it cries out toward you."

of revenge and the principle of reciprocal punishment latent in the phrase "redeemer of blood." According to this conception, the "redeemer of the blood" restores matters to the equilibrium that was disturbed through the act of the murder. The killing of the murderer by a family member of the victim – unlike execution in other transgressions, which is performed by the witnesses and the congregation[113] – reflects the conception that the blood of the victim that runs through the veins of his relatives wreaks vengeance, as it were, for the damage inflicted upon him.[114]

In fact, it would appear that P invests blood with a unique, sacred status transcending that of any other earthly matter or substance. Blood is identified with the soul – that is, it is the sustaining principle of the world, with its inherent dangers and potentiality, and all of its associated rituals. All of these attest to its divine source. Confirmation of this may be found in Genesis 9:6, where the declaration "Whoever sheds the blood of man, by man shall his blood be shed" is justified by the assertion "For in the image of God did He make man."[115]

Deuteronomy also identifies blood with the soul. Chapter 12, which deals with the laws of eating meat, states: "But make sure that you do not partake of the blood; for the blood is the life and you must not consume the life with the flesh" (Deut 12:23). Furthermore, D also characterizes homicide by the phrase "shedding of blood" (19:10), and its punishment. "redemption of the blood," is called "purging the blood of the innocent" (ibid., 10–13). The demand to purge the blood of the victim is particularly apparent in the ritual of the broken-necked heifer, performed when "it is not known who slayed him" (Deut 21:4–9).

Scholars tend to emphasize the difference between the conceptions of blood in P and D. They argue that the treatment of blood in D exemplifies its secular, rationalistic and anti-mythic tendency, thereby implicitly polemicizing with P. According to this reading, D divests the blood both of its polluting (miasmatic) character and of its magical-ritualistic dimension, transforming it into a symbol that functions solely in the moral-social realm.[116] However, a different reading of the Deuteronomic verses would identify the "stain" of blood with intentions (in the phenomenological sense) in the moral-social realm, yet the blood still retains its "objective" core, causing it to function also on the ritualistic-magical plane.[117] Admittedly, in D blood does not defile the land or the Temple, but the

[113] See, e.g., Lev 24:14; Num 15:35; Deut 21:21.

[114] Regarding blood redemption as an expression of the view that the entire community (family or tribe) are one unit, as opposed to later conceptions that perceive human beings as individuals, see Mowinckel, *Psalms*, p. 42.

[115] On the divine source of blood in Babylonian and Egyptian myths, see Weinfeld, "God the Creator," 114 and the references in n. 51.

[116] This is Weinfeld's interpretation (*Deuteronomy*, 210–211, 226) of the ritual of the broken-necked heifer. The effectiveness of the expiation is based, in his opinion, on the elders' words of confession and not on the spilling of the blood. Regarding the tendency to secularize and demythologize in Deuteronomy, see ibid., 233.

[117] See Milgrom, "Critique."

conception that "the blood is the soul" appears frequently (Deut 12:23).[118] Moreover, in D as well the spilling of blood, at least that of a human being, still requires expiation. D expresses the need for expiation through the phrase "purging the blood of the innocent," a clear allusion to the blood of the murdered victim, which also appears in the ritual of the broken-necked heifer. Regardless of how one understands D's approach to blood, for our purposes it resembles that of P with regard to the requirement for expiation through the blood of the murderer.

4. "Whoever sheds the blood of man, by man shall his blood be Shed": The Source of Execution by the Sword

Unlike modern critical scholars, the Rabbis generally harmonized conflicting Biblical passages. Reading P and D together, they extrapolated a commandment to expiate the victim's blood by shedding the blood of the murderer. Ultimately, the Rabbis derived the law of decapitation from blood's objectified ritualistic dimensions.

A passage from *Mekhilta de-Rabbi Ishmael* examines the punishment of the murderer, emphasizing that the murderer must be executed by the spilling of his blood:

> "[He who fatally strikes a man] shall be put to death" (Ex 21:12): By the sword. [You say by the sword] or does it perhaps mean by strangulation? One might reason in the following manner: It says here, "shall be put to death" and it says there, in the case of the adulterer, "shall be put to death" (Lev 20:10). Just as there it means strangulation, here too it means by strangulation.
>
> One compares it to the case of adulterer, but one might also compare it to the case of the blasphemer. Here it says "shall be put to death," and there (Lev 24:16), in the case of the blasphemer, it says "shall be put to death." Just as there it means by stoning, so too here by stoning.
>
> You may compare him to the adulterer, whereas I compare him to the blasphemer; or you compare him to the blasphemer, whereas I compare him to the adulterer. Scripture says: "Whoever sheds the blood of man . . ." (Gen 9:6).
>
> I might still say that one should drain his blood from his other limbs so that he should die. Scripture says: "And they shall break the heifer's neck in the streambed" (Deut 21:4); "So shall you purge innocent blood from your midst" (ibid., 21:9). (The verse) compares it to those who shed the blood of the heifer whose neck is broken. Just as the latter is killed by decapitation, so all those who shed blood are to be killed by decapitation.[119]

The anonymous author of this midrash begins with the statement that the unspecified death penalty ("he shall be put to death") prescribed for one who "fatally strikes a man" is with a sword. But upon examining the scriptural basis

[118] But Milgrom ("Critique") notes that the conception of the impurity of the land also exists in Deuteronomy. See Deut 24:4, 21, 23 and Josh 8:29; 10:27.

[119] *Mekhilta de-Rabbi Ishmael* (*Nezikin* 4, vol. 2, p. 34).

for this ruling he encounters a dilemma regarding the other capital offense that should serve as the proof-text for the murderer's punishment. On the one hand, an analogy might be drawn between the law of the murderer and that of the adulterer, who is punished by strangulation, the default mode of execution for "unspecified death penalties in the Torah." On the other hand, a murderer might also be compared to a blasphemer who is punished by stoning. The vacillation between these two offenses is not merely the result of the Torah's failure to specify their particular punishment. Rather, adultery and blasphemy, alongside murder, are the three prohibitions concerning which the halakhah mandates that one is "to be killed and not transgress" – that is, one must choose a martyr's death rather than commit any of these three sins.[120] The midrash, however, neutralizes both possibilities by playing one off against the other. This serves as a rhetorical device to underscore the uniqueness of the manner of execution for murder, which is with a sword. The first part of the passage is intended to demonstrate that one cannot derive the laws of execution for murder from the manner of execution for the other offenses, even those that possess a comparable level of severity. Instead, the midrash indicates that one must turn to another source – those verses that relate directly to murder. In my view, this constitutes a declaration of the singularity of the offense of murder and its punishment.

The conclusion of the passage is based upon a literal understanding of Genesis 9:6. Thus, "by man shall his blood be shed" is understood as meaning that a court ("by man") must spill the blood of the murderer ("shall his blood be shed"). Consequently his head is cut off with a sword. This interpretation is underscored by the question which immediately follows: "I might say that one should drain his blood from his other limbs so that he should die," and the answer based on the ritual of the heifer. The words "you shall purge the innocent blood" are understood as relating to the act of breaking the neck. However, in the Biblical context the meaning of these words, which conclude the passage concerning the broken-necked heifer, is unclear: Do they relate to the above-described ritual underscoring its importance? Or do they imply something new: namely, that if the murderer is apprehended after performing the ritual, there is still an obligation to "purge him." Our midrash supports the former alternative, deriving as it does the ritual dimension of capital punishment by sword from the verse: just as the breaking of the heifer's neck expiates the blood of his innocent victim, so too does the murderer's decapitation "cleanse" the blood of his victim. The analogy, however, is incomplete, as in tannaitic halakhah the breaking of the heifer's neck is performed with an axe,[121] whereas the decapitation of the murderer is with a sword. We must therefore understand this midrash as focusing on the essence of the ritual – spilling blood as a means of expiation – rather than on its details.

[120] See *b. San* 74b and parallel sources. Adultery is a classic example of illicit sexual relations (see ibid.) and blasphemy is a classic example of idolatry. See *Sifre Deuteronomy* (ed. Finkelstein, 221, 253–254); *b. San* 45b, and compare Ezek 16:39–40.

[121] See *m. Sot* 9:5; *Sifre Deuteronomy* 207 (p. 242).

Understood in this way, the passage remains consistent with the view of the Sages in the Mishnah that replaced the axe with a sword in order to minimize disfigurement.

Whereas the midrash is insistent that the murderer is executed by having his blood spilled, the Torah is not unequivocal. The murderer's punishment is cited in the Torah in four places; in two of them the motif of blood appears,[122] while in the other two places the penalty is unspecified.[123] Moreover, the motif of expiation by blood, which is cited in two of the sources, could be explained metaphorically as denoting the principle of reciprocal punishment ('Whoever sheds the blood of man, by man shall his blood be shed') rather than as specifically implying the need to shed the blood of all murderers. Indeed, *The Book of Jubilees* bases the penalty for murder on this principle. In its depiction of the first murderer, Cain, who becomes the paradigm for all murderers, *Jubilees* states:

> At the conclusion of this jubilee Cain was killed one year after him. And his house fell upon him, and he died inside his house. And he was killed by its stones, because he killed Abel with a stone,[124] and it was a just punishment that he was killed with a stone. For this reason it was ordained on the heavenly tablets: By the instrument with which a man kills his fellow he is to be killed; as he wounded him so are they to do to him (*Jub* 4:31–32).[125]

Neither Philo nor Josephus mention expiation by blood as the punishment of the murderer. Philo claims that the murderer is crucified:

> Since there are no bounds to the iniquities of evil natures, and they are ever committing a superabundance of enormities and extending and exalting their vices beyond all measure and all limit, the lawgiver would, if he could, have sentenced them to die times beyond number. But as this was impossible he ordained another penalty as an addition, and ordered the manslayers to be crucified.[126]

According to Josephus, however, he is punished by stoning, which in his view is "the unspecified death penalty in the Torah."[127] Given that decapitation as the punishment for murder and the requirement of expiation with blood is entirely absent in all pre-tannaitic sources and may not reflect the Torah's laws either, it seems likely that the exegesis found in the *Mekhilta* and in the halakhot found in the Mishnah and Tosefta, all of which require that the murderer's blood be shed, are tannaitic innovations.

122 Gen 9:6; Num 35:16–22, 30–32.

123 Exod 21:12–14 (the verse with which the midrashic passage begins); Deut 19:11–13.

124 Compare *Genesis Rabbah* 22.8 (p. 214).

125 *Jub* 4:31–32 (translation based on *The Book of Jubilees*, trans. J. C. Vanderkam, [Lovanii, 1989], 31). The principle of *lex talionis*, or "measure for measure," is the guiding penal principle in *Jubilees*.

126 *Laws* III, 150–152 (vol. 7, p. 571). See Colson's comments in the Loeb edition, n. (c).

127 *Ant* IV 202 (vol. 4, p. 573).

5. "It has no expiation other than through murder": Expiation through Blood

It is difficult to ignore the similarity between decapitation by the sword and the notion in sacrificial law that the expiatory element of sacrifices in general, and of the various sin and guilt-offerings in particular, is not the blood remaining in the animal after its death but rather the "blood of the soul (*dam hanefesh*)" – that is, the blood which spurts from the animal when slaughtered, seen as the "departure of the soul." This blood is sprinkled by the priest "before the Lord, in front of the veil" and "upon the horns of the altar,"[128] while the remaining blood is "poured out on the base of the altar." According to tannaitic halakhah, expiation is accomplished by sprinkling the "blood of the soul," whereas the blood remaining in the body is not efficacious and actually causes the disqualification of the sacrifices.[129] Consequently, the killing of the animal for sacrifice can only be done through ritual slaughtering;[130] similarly, the heifer's neck must be broken. The requirement for the decapitation of the convicted criminal, emphasized in the *Mekhilta* by its rejection of the option of blood being slowly drained from other parts of the body (a means of death that does not involve the "blood of the soul"), is similarly rooted in the conception of decapitation as a ritual of expiation.[131]

An additional detail from the laws of the broken-necked heifer, indicative of the requirement for blood as the agency of expiation, is the tannaitic law regarding the breaking of the heifer's neck, which applies exclusively to the victim whose blood was spilt, but not to the corpse that was strangled or hanged.[132] For our purposes, the phenomenology of this law is important even if its purpose is purely to limit the circumstances in which it is obligatory to perform the ritual of breaking the heifer's neck. It is nonetheless noteworthy that capital punishment by decapitation applies to all acts of murder, even if they do not involve the actual spilling of blood.

The demand for ritual expiation for bloodshed is also found in the following midrash from *Sifre Numbers*:

"And the land can have no expiation for blood that is shed on it" (Num 35:33). Why was this said? As it says, "there ... they shall bring the heifer's neck" (Deut 21:4); behold, if they broke its neck and thereafter the killer was found I might have thought that it was

[128] See, e.g., Lev 4:6, 7, 17, 30, 34.

[129] This conception is found in the Bible (see Milgrom, "Critique") and to a greater degree in tannaitic law. See, e.g., *Sifra, Hovah* 3.7; *m. Ker* 5:1; *t. Zev* 8.17.

[130] As a condition for permitting consumption of the sacrifice.

[131] On the sin offering as a substitute for the sacrifice of a person in tannaitic literature, see A. Büchler, *Sin and Atonement*, 441–442.

[132] See *Sifre Deuteronomy* 205 (p. 240) and parallels; see also the comments of Finkelstein, ibid., n. 7; cf. *b. Sot* 9b, *y. Sot* 9.1 (23c); and Lieberman, "After Life," 514.

already expiated for them. Hence Scripture says, "and the land can have no expiation."[133]

This midrash makes it clear that breaking the heifer's neck does not exempt the murderer from capital punishment. It would appear that the requirement that the murderer be killed is premised upon the ritualistic demand for expiation by means of his blood. This demand is connected to the religious dimension of bloodshed, as emphasized in the following passage from *Sifre Numbers*:

"And you shall not defile the land" (Num 35:34) ... The verse says that the spilling of blood defiles the land and causes the Divine Presence to depart.[134]

The phrase "The verse says that the spilling of blood defiles the land and causes the Divine Presence to depart" should not be understood as a metaphor expressing a moral value or social interest (such as punishment as deterrent or prevention), but rather as highlighting the religious consequences of the act of murder. Similarly, it states in *Midrash ha-Gadol* that: "Bloodshed is harsh, for it has no expiation other than through murder, as it says, 'and the land can have no expiation for blood that is shed on it except by the blood of him who shed it' (Num 35:33)."[135]

The homily from *Sifre Numbers* and the passage from *Midrash ha-Gadol* provide a literal, non-metaphoric interpretation of the verse in Numbers 35. Combined with the *midrash* from *Mekhilta*, which bases the law of decapitation on a literal reading of "by man shall his blood be shed" (Gen 9:6), these and other sources form a unified and coherent approach to the need to expiate the blood of the murder victim.

We are now better able to understand how different the exegetical derivation of decapitation is from those of other forms of capital punishment. In contrast with all other modes of execution – burning, strangulation, and stoning (see below) – which rabbinic exegesis derived in isolation from the particular offenses to which they apply, the law of decapitation is derived directly from the (one) offense to which it applies. Only for the murderer is this particular mode of execution deeply rooted in the nature of his offense.

The demand for blood in exchange for bloodshed also follows from a passage in *Avot de-Rabbi Nathan* concerning the first appearance of death in the Bible:

For three offenses women die when they are giving birth: for carelessness in regard to menstrual purity, in [separating] *hallah*, and in lighting the Shabbat lamp.[136] Why were the commandments of menstrual purity given to woman and not to man? Because Adam was the blood of the Holy One, blessed be He; Eve came and spilled it. Consequently, the

[133] *Sifre Numbers*, 161 (p. 232); see also *t. Ker* 4.3 (p. 566); *b. Sot* 40b.
[134] *Sifre Numbers*, ibid. See also *Midrash ha-Gadol, Exod*. 427–428, and passim.
[135] *Midrash ha-Gadol, Exod*. 427–428.
[136] *m. Shab* 2.6.

commandments of menstrual purity were given to her, so that the blood she spilled might be atoned for.[137]

The woman's punishment for causing Adam's transgression with the Tree of Knowledge and his subsequent death[138] was the phenomenon of menstruation, creating a set of obligations and prohibitions, whose breach similarly precipitates death.[139] This midrash provides a mythic etiology for the woman's menstrual bleeding, grounded in the Biblical notion that only blood can expiate bloodshed. The uniqueness of this passage lies in the fact that it expresses the mythic-theosophical dimension of the sacred state of human blood: "Adam was the blood of the Holy One, blessed be He." According to my understanding, Genesis 9:6, "for in the image of God did He make man," explains the connection between the prohibition of bloodshed and the requirement of expiation for bloodshed with the murderer's blood. This midrashic passage presumably alludes to the fact that the import of man's being in God's image is, *inter alia*, that the divine blood is merged with human blood.[140] Hence, spilling "the divine matter" demands expiation with the very same matter. We shall return to this passage below.

Execution by decapitation is an exception among the tannaitic modes of execution, which generally tend to avoid any bodily disfigurement. As we have noted, death by sword, as a form of judicial execution, applies to one offense alone – murder. Regarding this offense there are explicit verses mandating the spilling of the murderer's blood in order to expiate the victim's blood and to prevent the pollution of the land. The phrase "by man shall his blood be shed" (as well as other Biblical verses) was therefore interpreted by the tannaim as a ritualistic demand to expiate the blood that was spilt with the blood of the murderer. The requirement for blood expiation which, as stated, is exclusive to the offense of

[137] *Avot de-Rabbi Nathan* (Version B), Chapter 9 (p. 83). It further states "Adam was the blood of the world, because she caused to be spilled she was put under the obligation to observe the law of menstrual purity." For a different version of this passage, see Kister, *Avot de-Rabbi Nathan*, p. 94; cf. *Genesis Rabbah* 17.8 (p. 160); *y. Shab* 2.5 (8a).

[138] See Gen 2:17 "For on the day that you eat it you shall die."

[139] This homily evidently connects the phenomenon of menstruation with the halakhic norms "derived" from it. The allusion to a causal connection between transgressing the laws and the woman's death emerges from the appending of the homily to the Mishnah in *Shabbat* (ibid., ibid.). Conceivably, it also connects the phenomenon of menstruation with the phenomenon of procreation, the origin of which is in sin, and constitutes a kind of compensation for death (which also originated in sin).

[140] This midrashic passage echoes Egyptian and Babylonian myths according to which man is created from God's blood. It is important to stress that in these myths, this motif is also connected with the conception that man (and in the Babylonian texts, the king and the priest) is an image of God. See Weinfeld, "God the Creator," 114, and his references in n. 51*;* and the entry "Blood" in *TDOT*, 237–289. Regarding the possible Biblical context, see Miller, "Image and Likeness of God."

murder, forced the Sages to diverge from the principle that guided them in their formulation of the other forms of capital punishment.

It is well known that the mainstream of the tannaim aspired (informally) to abolish capital punishment. At the end of the extended section concerning "capital legislation," the Mishnah cites the view of R. Akiva and R. Tarfon: "Had we been members of the Sanhedrin no one would have ever been executed" (*m. Mak* 1.10). Scholars have long noted that criminal procedure in tannaitic law generally, and in the Mishnah in particular, was structured in a manner that effectively prevented execution. This conception is similarly applicable to the offense of murder. In Chapter 7, I will analyze the foundations of this notion, which are rooted in the concept of man's creation in the image of God. At this stage, I will suffice with the observation that the effective abolition of capital punishment by this school of tannaim undermines the Biblical imperative of expiation by means of the murderer's blood, which necessitates capital punishment.[141] In other words, although when formulating the death penalty by decapitation the tannaim remained true to the verses enjoining the murder of the murderer, they indirectly undermined these same verses when they instituted procedural barriers that preclude any possibility of its realization.[142] A fundamental tension thus exists between the overall trend in Mishnah Sanhedrin – namely, to refrain from the possible implementation of the death penalty – and the requirement for expiation with the murderer's blood. Both of these thought constructs are apparently rooted in the conception of creation in the Divine image in Genesis 9:6; I will deal with the tension between them below, in Chapter 7, Section IV.

V. STONING

The details of execution by stoning are recorded in Chapter 6 of *Mishnah Sanhedrin*, which depicts the final stages of the criminal procedure, from the conviction of the accused, through the general structure of execution applicable to all the forms of capital punishment, and concluding with matters pertaining to burial. While many of these laws are applicable to convicts condemned to other modes of execution, two interrelated factors seem to have led to the choice of execution by stoning as the mode of execution with which the Mishnah's capital proceedings culminate. First, stoning is the most severe form of execution.[143] Second, post-mortem hanging applies exclusively to (some of) those who were stoned. The mishnaic redactor thus chose to describe the entire sequence of a

141 In my view, this fact was of decisive importance in the development of the concept of blood in tannaitic halakhah.

142 The use of this technique to limit, if not altogether eliminate the possibility of implementing capital punishment, is evident in the rabbinic interpretation of specific offenses such as that of the rebellious son or the idolatrous city. See *b. San* 71a.

143 This is the view of the Sages. It is disputed by R. Shimon, who contends that burning was the cruelest form. See *m. San* 7.1.

capital proceeding from beginning to end, including hanging and therefore also execution by stoning.

Upon completion of the trial, the convict was led outside the court to the stoning site. A herald preceded him, proclaiming the manner of his execution and the offense for which it was imposed. Ten cubits away from the stoning site the convict would confess, and four cubits away he was stripped of his clothing (he remained covered in front). The Mishnah then proceeds to describe the actual stoning procedure:

> The place of stoning was twice a man's height. One of the witnesses pushed him by the hips, [so that] he was overturned on his chest. He was then turned on his back. If that caused his death, he had fulfilled [his duty]; if not, the second witness took a stone and threw it on his chest. If he died thereby, he had fulfilled [his duty]; if not, he [the criminal] was stoned by all Israel, for it is says: "The hand of the witnesses shall be first upon him to put him to death, and afterwards the hand of all the people." (Deut 17:7)[144]

The Mishnaic formulation of stoning is surprising: being pushed from a high place replaces the throwing of stones. The stoning was delayed to the later stages of the execution process, and might be redundant if pushing was sufficient to cause his death. As we shall presently see, this was ultimately perceived as undesirable. The substitution of stoning by pushing alters the entire nature of stoning as a form of execution. Instead of an ostentatious spectacle with the participation of the entire community, it becomes a relatively subdued procedure, performed by only one of the witnesses, who pushes the condemned man "on his chest." Admittedly, if the condemned doesn't die either by being pushed or by having the stone placed on his chest by the second witness (after being turned over), then "he was stoned by all of Israel." But, according to a baraita found in the Talmud "It [the stoning by all of Israel] was never actually performed" (*b. San* 45b). Before undertaking a more detailed examination of the Mishnaic formulation of stoning, we will turn our attention to the Bible and the relevant post-Biblical sources, all of which indicate the profound changes introduced by the tannaim regarding this form of execution.

1. Stoning in the Bible and in Post-Biblical Sources

In both the Bible and throughout the ancient world, stoning was known as a particularly cruel and disfiguring form of execution,[145] practiced by the Greeks, the Persians, and the Macedonians.[146] In the Bible the criminal was stoned by the entire congregation (see Num 15:35),[147] thereby enabling them to vent their rage against the criminal, to avenge themselves against him, and to deter others. The

[144] *m. San* 6.4.

[145] Blinzer, "Stoning," 145 and his references to other sources at n. 1.

[146] For the classic sources characterizing stoning as a primitive form of execution, see *Ant* XIV, 25.

[147] Regarding the woodcutter; and cf. Lev 20:2: "The people of the land shall stone him with stones" (a person who sacrificed his child to Molech); Lev 24:14: "Let all the congregation stone him"

deployment of the community in the stoning procedure establishes it as an act of public excommunication of the criminal, while simultaneously ensuring the community's internalization of the values violated by the offending party. These features distinguish it from other forms of execution, making it the most widespread form of capital punishment in the Bible. It is mentioned both descriptively, in describing actual execution procedures, and prescriptively, as the form of execution for capital offenses. This led scholars to conclude that stoning is actually the unspecified form of Biblical execution – in other words, the Bible's default mode of capital punishment.[148] For the same reasons, Philo also regarded stoning as the preferred form of execution in the Bible. In explaining the stoning of the blasphemer (Lev 24:14) he writes, "and desiring that the punishment should be shared by all of the people, whom as He knew were deeply indignant and desired the death of the offender. And execution by stones appeared to be the only mode in which so many thousands could take part."[149] Josephus likewise characterizes stoning as the entire community throwing stones at the condemned, and adds that "Thus too shall it be with all those who howsoever are condemned by the laws to be put to death."[150] Stoning was likewise the default mode of execution in *Jubilees* and in the Dead Sea Scrolls.[151] All New Testament sources relating to stoning describe it as the throwing of stones. For example, concerning the adulterous woman Jesus says, "He that is without sin among you, let him cast the first stone at her."[152] Although pushing the condemned from an elevated spot is also mentioned in some early sources, these only serve to underscore the unique character of stoning in the Mishnah. 2 Chronicles relates the story of Amaziah and the Judeans who took the children of Seir as prisoners, and "Another ten thousand men of Judah captured alive and brought unto the top of the rock. They cast them down from the top of the rock and every one of them was burst open" (2 Chr 25:12). The Septuagint version of *Susanna* (par. 62) states that the false witnesses who attempted to incriminate her with adultery were hurled onto the

(blasphemer); Deut 21:21: "And all the men of his city shall stone him with stones" (rebellious son); Josh 7:25: "And all Israel stoned him with stones" (Achan); 1 Kings 12:18: "And all Israel stoned him with stones"; 2 Chr 10:18 (Hadoram). In Deuteronomy 13:10 (enticer) and Deuteronomy 17:7 (idolatry), the stoning is begun by the person enticed and the witness, but nevertheless the verses emphasize: "and afterwards the hand of all the people." As distinct from the Mishnah, these verses do not evidence any attempt to obviate the public stoning.

148 Blinzer, "Stoning," 148. Loewenstam ("Judicial Executions," 947) remarked that stoning in the Bible was imposed for a broad spectrum of offenses, both between man and God and man and others. Consequently, where the Torah did not prescribe a specific form of execution, its intention was stoning.

149 Philo, *Moses* II, 201 (based on translation of F. H. Colson, in *Philo*, Loeb Classical Library, vol. 6, p. 549).

150 *Ant* IV. 265 (based on translation of H. St. Thackeray, in *Josephus*, vol. 4, p. 603).

151 *Damascus Scrolls*, 12:2–3 (133) combined with Lev 20:26; *Jub* 33:10–15 (266–267).

152 In accordance with Biblical law; see John 8:5, and cf. idem 59, and 10:31–33; Acts 7:58–59 (the stoning of Stephen); and cf. Blinzer, "Stoning," 107; Loewenstamm, "Judicial Executions," 947.

cranny of the rock.[153] But none of these sources refer to the act of pushing as "stoning"; more important, the pushing was from a significant height and was intended to mutilate the convict's body.

Roman law makes no mention of stoning as a method of capital punishment.[154] Hurling the convict from a cliff (*tarpeio deicere e saxo*) was practiced in Rome until the era of Claudius, and was thereafter forbidden.[155] According to the Roman procedure, the convict was hurled off a high cliff, after which his body (or its remnants) would be dragged away and thrown into the Tiber River.[156]

All Biblical and post-Biblical sources indicate that stoning in the Jewish tradition refers to the casting of stones performed by the entire congregation. This form of execution was considered to be cruel and maiming, both because of the suffering involved and because of the dismembering of the convict's body. Though a number of sources refer to a form of execution somewhat similar to that of stoning in the Mishnah, that is, being hurled from a rock, it is not referred to as stoning, and differs fundamentally from the tannaitic "commandment of stoning," because its purpose is the mutilation of the body.

2. "Those who are stoned: their blood [remains] inside them"

In a *midrash* on Exodus 19:13: "No hand shall touch him but he shall be stoned, or shot; if beast or man, he shall not live," *Mekhilta de-Rabbi Ishmael* states:

> "But he shall be stoned." From whence do I know that it [the death penalty] was accomplished by pushing? Scripture states, "he shall be shot" (*yaroh*). And from whence do I know that if he died through being pushed he has fulfilled [his obligation]? Scripture states *yiyareh* ("he shall surely be shot"). And from whence do I know that all those who are stoned are pushed? Scripture says, "But he shall be stoned or shot."[157]

The midrash derives execution by stoning from the divine punishment with which God threatened Israel for transgressing the prohibition of touching Mt. Sinai during the three days prior to the giving of the Torah.[158] This derivation is based on the identification of *yaroh* with "pushing," rather than "shooting" as the verb is usually translated. *Sakol* ("stoning") is interpreted as meaning the casting of stones, while the word *yaroh* is interpreted as pushing the criminal

153 This source is cited by Albeck, *Mishnah, Nezikin*, 447, who also cites II Macc 6:10.

154 Hirzel, "Stoning," 37 (following Momssen); see also Blinzer, "Stoning," n. 1.

155 *Dig*, 48.19.25.1; see Blinzer, "Stoning," n. 25.

156 Krauss, "Bodily Affliction," 95. Regarding the custom of dragging the body as a means of abasement (*damnatio memoriae*), see Lieberman, "After Life," 307.

157 *Mekhilta de-Rabbi Ishmael, ba-Hodesh* 3 (vol. 3, pp. 212–213); see parallels in *b. San* 45a and *Mekhilta de-Rashbi, Yitro* 19.13 (p. 141).

158 Compare Halbertal, *Revolutions*, 149–153, who argues that the tannaim interpreted the punishment at Mt. Sinai ("he shall surely be stoned") as having been humanly implemented. This interpretation ignores the tannaitic aspiration to emulate execution at the hands of Heaven, as indicated in all the other executions.

himself. As noted, this interpretation deviates substantially from the simple sense of the verse: the root *yr"h* indeed connotes an act of hurling, but in the vast majority of its Biblical appearances it refers to the shooting of arrows.[159] In its simple sense, this verse warns the transgressor that God would strike him with a stone or an arrow. But the root *yr"h* can also refer to the hurling of a human being, for example, "Pharaoh's chariots and his army He has cast (*yarah*) into the sea" (Ex 15:4). The tannaim utilized the metaphoric use of the root *yr"h* in the Song at the Sea as a proof-text for reading the phrase *yaroh yiyareh* in Exodus 19:13 as meaning pushing a person rather than the hurling of arrows, and in so doing were able to support their refashioning of execution by stoning.

While transforming stoning by way of casting stones into stoning by pushing, the *Mekhilta* also derives from this verse the other components of rabbinic stoning. At the first stage, the homily teaches that, in addition to the physical casting of stones ("he shall be stoned"), the stoning procedure also includes pushing: "From whence do I know that it [the execution] was accomplished by pushing? Scripture says, *yaroh*." It then deduces the "sufficiency" of pushing. In the words of the Mishnah: "if he died thereby, he fulfilled [his duty]." The transformation is completed when it stresses that not only is pushing a *possible* mode of performing stoning, and that it suffices to fulfill the duty, but that it is an *essential* component, in whose absence the duty is not discharged ("From where do I know that all who are stoned are pushed?"). In a parallel baraita found in Bavli Sanhedrin, the exegesis goes one step further, emphasizing that Exodus 19:13 is applicable to normative law and not just to the events surrounding the revelation: "From whence do I know the same procedure is to be followed for [all subsequent] generations? Scripture says, 'He shall surely be stoned' (*sakol yisakel*)."[160]

Neither the homily in the *Mekhilta* nor the stoning procedure in the Mishnah completely reject the Biblical manner of stoning, but rather relegate it to the later stages of the procedure, deeming it redundant and even undesirable. This tendency is explicitly stated in the baraita cited above (*b. San* 45a): "It [the stoning] was never actually performed." Whether understood as referring to the second stage, in which the witness places a stone on the condemned, or the third stage, where the condemned is "stoned by all of Israel," this represents a substantial deviation from Biblical stoning. Although the baraita's formulation is descriptive, in the absence of concrete evidence concerning execution by stoning during the Temple period, and given the lack of jurisdiction in capital matters during the tannaitic period, it should be understood as a normative, prescriptive

[159] 1 Sam 20:21–2; 2 Sam 11:20–24; Prov 26:16; 1 Chr 10:4; 2 Chr 35:23; Num 21:30; 2 Kings 13:17. In II Chr 27:16, in addition to the throwing of arrows, there is also the throwing of stones. See also Gen 31:51; Job 38:10 (setting up a pillar); Josh 18:6 (casting of lots).

[160] *b San* 45a-b; see also *Sifra, Emor* 20:10 (105b). One cannot conclude from this inference that the author contended that the stoning at Mt. Sinai was at the hands of man.

pronouncement, whose ultimate goal is to prevent the gross disfiguring of the convict's body.

The Rabbis' willingness to suffice with pushing alone is particularly salient when contrasted with the contrary opinion of R. Shimon found in the Tosefta: "A stone was there which it took two men to lift . . . He lifted it and dropped it on his [the victim's] chest in order fulfill the commandment of stoning"[161] According to R. Shimon, stoning cannot be fulfilled solely by pushing. Consequently, he requires placing a stone on the body of the condemned, even if only symbolically and even if he had already died as a result of being pushed![162] This requirement attests to his reservations regarding the complete substitution of pushing for throwing of stones. The transformation of the stoning procedure from pelting with stones to pushing the convict is similarly attested to in *Bavli Ketuvot*, "Since the day of the destruction of the Temple, although the Sanhedrin ceased, the four forms of capital punishment have not ceased . . . He who would have been sentenced to stoning, either falls down from the roof or a wild beast tramples over him.[163]

The shift from stoning to pushing was not sufficient to avoid disfiguring the executed man's body since, as we saw in our survey of the Biblical evidence, pushing from a high place can itself be extremely disfiguring. Hence another restriction is provided in the next stage of the Mishnah: "the place of stoning was two stories high," and no more. A baraita adds: "And with his own height, there were three [stories] in all."[164] A "story" is the height of an average person, estimated at about three cubits.[165] Both Talmuds conjecture as to the reason why the Mishnah is so adamant about this precise height. The Bavli (*San*. 45a) asks: "Do we really need it to be so high?" And they bring a contrary source: "Just as a pit so as to be reckoned as causing death must be ten handbreadths [deep], so anything is deemed sufficient to cause death must be ten handbreadths." The question is rhetorical, it being obvious that ten handbreadths, the minimal depth for liability in damages caused by a pit, cannot simultaneously be the criterion for a height intended to cause death. Rather, it serves as the starting point for the discussion of why the stoning house was two floors high, no more and no less. The Bavli's response relies upon R. Nahman's homily that reverberates throughout the Talmudic discussions of capital punishment: "The verse states, 'Love thy neighbor as yourself' – choose for him a good death. Ten handbreadths may not be enough to kill; hence it is not a good death." A similar question receives a somewhat different response in the Yerushalmi (*San* 7.5): "One who falls intentionally is not comparable to one who falls unwittingly."

161 *t. San* 9:6 (p. 429).
162 Another example of symbolic stoning, also of the dead person's body, appears in *m. Ed* 5.6.
163 *b. Ket* 30a.
164 *b. San* 45a; compare *y. San* 1.7 (23c).
165 *b. Eruv* 48a.

Consistent with its approach, the Bavli explains the justification for the minimum of two stories and not ten handbreadths as being a result of the wish to reduce the suffering of the condemned. The Yerushalmi, on the other hand, emphasizes a more basic aspect: being pushed from ten handbreadths would not kill, and this would preclude its basic purpose. While the general tendency of the Mishnah to reduce the suffering of the convict cannot be denied, the Yerushalmi's explanation for the minimum height requirement is more congruent with the tannaitic sources generally, and specifically the Mishnah. As we observed above, these sources evince an attempt to ensure the death of the condemned man already by the initial act of pushing, thereby obviating the need for the more mutilating procedure of pelting him with stones.[166] The Bavli continues: "But if so, let them make it higher!" and answers "because of disfiguration." Rashi explains: "If it is too high his body will be crushed, his bones dismembered, and his belly split."[167] The only way of explaining the two floors as a maximum requirement is in terms of preservation of bodily integrity. To summarize, the Mishnah gives a calculated assessment: two stories, the height of the stoning place, is optimal. It causes immediate death (thereby obviating the need for stoning with rocks) and is therefore not too low; and it minimizes bodily damage, and is therefore not too high.

Stoning is similar to burning and strangulation in that it too was derived from execution at the hands of Heaven. In stoning, the human court emulates God, who threatens to stone the person who would burst through the boundaries surrounding Mt. Sinai during the three days preceding the Revelation. The threat of stoning at Sinai was interpreted by the midrash as the execution of the soul alone, as was the burning of Nadav and Avihu.[168] The firing of an arrow was interpreted in terms of pushing the convicted criminal, which in the stoning procedure performed by a human court was conducted from a two-story high platform. It will be recalled that Rabbi's general principle was "Just as the death penalty at the hands of Heaven leaves no mark, so too the death penalty at the hands of man leaves no mark." This principle, having been explicitly applied to death by strangulation, was apparently extended to stoning as well. Hence, to paraphrase the incisive formulation of Ibn Ezra cited above: "'His bloodguilt is in him' (Lev 20:9): This is similar to 'his blood will be on his head' (Josh 2:19), for both those who are stoned and those who are strangled, their blood stays inside them."[169]

3. Dating the Rabbinic Formulation of Stoning

A comparison of Second-Temple sources with those found in tannaitic literature has led scholars to conclude that stoning as depicted in the Mishnah was not

166 Compare Halbertal, *Revolutions*, 149–153.
167 *m. San* 9.5.
168 *Mekhilta de-Rabbi Ishmael, Amalek* 3 (212).
169 Commentary on Lev 20:9.

practiced during the Temple period,[170] while lack of political authority to adjudicate capital matters would have prevented its implementation during the post-Destruction period. As noted above, the New Testament describes stoning as rock-throwing by the public. *Jubilees*, the Dead Sea Scrolls, Philo, and Josephus all present a similar picture of the Jewish law of stoning. Indeed, there is no external evidence for stoning in the manner depicted by the Mishnah, making it impossible to accept Urbach's thesis that the Mishnah portrays capital punishment as practiced by the local courts composed of 23 judges that existed during the Temple period. True, there are some rabbinic sources that do attest to actual stonings: the stoning of Ben Satra in Lod (*t. San* 10.1); "a man who rode a horse on the Sabbath in the time of the Greeks" (*b. San* 46a; *y. Hag* 2.2 [71a]); and "a woman who came to Jerusalem carrying a baby on her shoulders," etc. (*b. Kid* 80a). But even assuming the historical veracity of these sources, they do not specify the manner of execution, and it cannot be taken for granted that they were conducted in accordance with the Mishnaic procedure.[171] The chicken that "killed a person" and which, according to the testimony of R. Judah b. Baba, was stoned in Jerusalem (*m. Ed* 6.1) was presumably stoned with a rock, because it seems highly implausible that it was killed by being pushed from a two-story structure.[172] We must also reject the thesis that the Mishnah's form of stoning was an imitation of the Roman execution in which the convict was pushed off a high place (practiced while the Republic still stood),[173] due to the substantial differences between them, rooted in the rabbinic insistence on a "death [penalty] that leaves no mark." It therefore seems certain that the Mishnaic formulation of stoning was not implemented during the Temple period, but was a tannaitic innovation from the end of the first or beginning of the second century. It aspired to structure an execution by stoning which left only a minimal mark on the convict's body. The dating of this innovation is further supported by our conclusion that the tannaim introduced similar changes in the other forms of execution.

VI. HANGING

In the Bible and in many of its ancient interpretations, hanging is an additional punishment, inflicted upon convicts after their execution. From numerous sources in the ancient world (including Jewish ones) in which hanging also serves as a form of execution, it follows that it was imposed for offenses which we could classify as treason, in the broad sense. This form of execution was motivated by

170 Blinzer, "Stoning," 161 and his references at n. 36.

171 Compare Urbach, "Courts," n. 28. Regarding Ben-Satra, see Alon, *Studies*, I:103, n. 63.

172 The majority view in tannaitic halakhah is that, like any other animal or beast that kills, the ox too is stoned by being pushed. See *m. San* 1.4; *y. San* 10.4 (17d) and *Mekhilta de-Rashbi, Yitro*, 21:29 (p. 181).

173 According to Baumgarten, "Hanging and Treason," 13; Urbach, "Courts," n. 21.

considerations of deterrence and revenge, as it particularly humiliated and degraded the convict, primarily by leaving his corpse to hang without burial for many days, allowing it to decay. The Torah restricts this humiliation when it requires the burial of the hanging body on the very day that it is hanged: "You must not let his corpse remain on the tree overnight, but bury him the very same day" (Deut 21:23). Post-Biblical exegesis interpreted these verses as a positive obligation to hang all (or some of) those executed by court order. Even though this was restricted to a duration of one day (the day of execution), it was nonetheless to be fully implemented.

By contrast, tannaitic halakhah restricts hanging to particularly grave offenses against God: cursing God's name and idolatry.[174] More important, it structures hanging in a manner intended to remove its most degrading aspects. What was originally a gruesome and terrifying spectacle became a symbolic gesture, placing greater emphasis on taking the body down from the tree than raising it up there, as if to say: the stature of man, who is created in the Divine image, even after being judicially executed, eclipses even the gravest possible guilt.

Certain tannaim seem to have understood the law of hanging in light of the conception of man's creation in God's image. In the following section, I will analyze a number of rules governing hanging in tannaitic halakhah. In the subsequent chapter, I will discuss the idea of man's creation in God's image, which forms the foundation of the law of hanging, and which in my view is closely connected to other forms of capital punishment.

1. Hanging in the Bible, in Early Sources, and in Post-Biblical Jewish Tradition

Hanging is evidently perceived in the Bible as an additional punishment imposed on the criminal after his execution: "If a man is guilty of a capital offense and is put to death, and you hang him on a tree" (Deut 21:22).[175] Some scholars have contended that the words "guilty of a capital offense" applies to all judicial executions, and that the punishment of hanging thus supplements the execution by stoning, which is the usual form of capital punishment in the Bible.[176] Another view is that the words refer to royal jurisdiction, under which rebels and traitors were generally hanged.[177] Resolving this question is of secondary importance, as a literal reading of the verse indicates that the Bible's intention was not to positively command the act of hanging, but rather to restrict it. If a

[174] According to the Sages, against the opposing view of R. Eliezer. See *m. San* 6.4; *infra*.

[175] See also Gen 40:19; Josh 8:29; 2 Sam 4:12; 21:12; Est 9:13–14.

[176] Loewenstamm, "Judicial Executions," 949; Blinzer, "Stoning," 148.

[177] Weinfeld, *Deuteronomy*, 51, n. 4, cf. references to the studies of Driver and Brichto; Segal, "Liability," 119, and references at 142. This interpretation was also given by the *Netziv* (Rabbi Naftali Zvi Yehuda Berlin), in his commentary *Ha-'amek Davar*, at Deut 21.22; cf. Yadin, *The Temple Scroll*, I, 337.

court or a sovereign chose to hang the executed person, they were obliged to take him down from the tree and bury him the very same day. The words, "and you hang him on a tree" are not prescriptive, but rather serve as a preliminary description for the prohibition of leaving the corpse hanging. The restrictions pertaining to hanging should be understood against the background of the custom prevalent throughout the ancient world – to leave convicts hanging for days on end, to deny them burial, and to abandon their corpses as carrion for the beasts and the birds.[178] There are a number of descriptions of hanging in the Bible which indicate that hanging was practiced in Israel, albeit while observing the prohibition of leaving the body.[179]

The Bible itself provides an explanation for the prohibition of leaving the body on the tree overnight: "You must not let his corpse remain on the tree overnight, but must bury him the same day. For God's curse is hanging: you shall not defile the land that the Lord your God is giving you to possess." This verse has received much attention in ancient literature and subsequently in scholarly literature,[180] primarily due to the ambiguity of the words "God's curse [is hanging]" (*kilelat Elohim talui*)." The possessive component in "God's curse" relates either to the object – the curse by which God is cursed, in the sense of "Upon me be your curse, my son" (Gen 27:13), or the subject – the curse imposed by God, as in "and upon them came the curse of Yotam" (Judges 9:57). The commentator's task is not exhausted in deciding between these two possibilities, for both possibilities admit of a number of interpretations. For example, assuming that God is cursed (possessive of the object), the following questions, among others, arise: By whom? When? In what manner? Other, parallel questions arise if the phrase "God's curse" is taken to mean that God does the cursing. Naturally, the answers to these questions are interrelated. The meaning ascribed to the phrase "God's curse is hanging" turns on the interpretation given to the entire section on hanging. The Talmudic law of hanging is based primarily on the tannaitic exegesis of these words, which will be the focus of the following discussion.

Hanging was widespread in the ancient world, *inter alia* in Assyria, Greece, and Persia.[181] The Romans incorporated hanging in their legal system as an additional form of execution, and at a certain stage after the fall of the Republic it was replaced by crucifixion, which was introduced throughout the Empire, including Palestine.[182] Hengel observes that it was not always possible to distinguish between crucifixion as a form of execution, and crucifixion that

[178] Weinfeld, *Deuteronomy*, p. 51; Baumgarten, "Hanging and Treason, p. 477."

[179] See Josh 29:10, 27.

[180] Bernstein, "God's Curse"; Wilcox, "Upon the Tree"; Schwartz, "The Cursed"; Yadin, *The Temple Scroll*, I, 373–385. For additional studies, see references in Bernstein, Wilcox, and Schwartz.

[181] See Hengel's survey in *Crucifixion*, 22 f.

[182] For a history of crucifixion, see Hengel, ibid. Regarding the change in Roman Law, see Baumgarten, "Hanging and Treason," 12. Koleman, "Fatal Charades," discusses crucifixion

followed an execution, but in either event it involved an unparalleled degree of degradation.[183]

Hanging as a form of execution also seems to have been practiced among the Jews. A number of sources substantiate this, the most prominent of which is a passage in the *Temple Scroll* 64: 6–13.[184] Certain scholars contend that hanging was implemented for offenses against the community and the nation. A positive attitude toward hanging is similarly evident in the Biblical commentaries of Philo and of Josephus. According to Philo, the hanging in Deuteronomy 21, which he interprets as crucifixion following the execution, is imposed for the offense of murder:

> Since there are no bounds to the iniquities of evil natures, and they are ever committing a superabundance of enormities and extending and exalting their vices beyond all measure and all limit, the lawgiver would, if he could, have sentenced them to die times beyond number. But since this was impossible he ordained another penalty as an addition, and ordered the manslayers to be crucified. Yet after giving this injunction he hastened to revert to his natural humanity and shows mercy to those whose deeds were merciless when he says "Let not the sun go down upon the crucified but let them be buried in the earth before sundown." For while it was necessary that the enemies of every part of the universe should after punishment be set on high and exhibited to the sun and heaven and air and water and earth, it was equally necessary that they should be thrust down into the place of the dead and there entombed, that nothing above the earth might be polluted by them.[185]

Philo approved of hanging, which he viewed as a Biblical commandment, albeit circumscribed by the prohibition against leaving the body hanging. Two reasons are suggested for the prohibition: God's mercy on the criminal; and the fear of the impurity excreted from the hanging body. Together, these restrictions limit the duration of the hanging to which the murderer was subject under the Law.

Josephus also took a positive view of *hanging*, but significantly extended its application: "Let he that blasphemes God be stoned, then hung upon a tree all that day, and then let him be buried in an ignominious and obscure manner."[186] Further on, he designates the punishment of hanging for the rebellious son, thereby including all those who are liable for stoning:

> And the multitude shall follow him and they shall stone him; and when he has remained there for one whole day exposed to the general view, let him be buried at night. And thus it is with all those whom the laws condemn to die, upon any account whatsoever. Let our

as a form of execution in Rome ("Fatal Charades," p. 56); see also: Macmullen, "Savagery." The mass crucifixions that occurred in Israel during the rebellion are recorded in *Wars* V.75; and II. 449–451. For additional sources see Hengel, *Crucifixion*, 26, n. 17. Crucifixions in Egypt are discussed in Philo, *In Flaccum*, 24; see also *y. Ber* 2.8 (5c).

183 Hengel, *Crucifixion*, 24.

184 Yadin, *The Temple Scroll*, I, 203–204.

185 *Laws* III. 151–152 (vol. 7: 571–572).

186 *Ant* IV. 202 (vol. 4: 573).

enemies that fall in battle be also buried; nor let any one corpse lie above the ground without burial, paying more than its just penalty.[187]

Josephus interprets Deuteronomy 21:22–23 as commanding all those liable for capital punishment to hang "for the duration of an entire day" (limited only by the obligation to bury at night).

Like crucifixion, the hanging ritual did not admit of equanimity. The agony of the people being hanged and their decaying corpses occasioned revulsion and terror. Hence it is not surprising that hanging played a central role in the "purgatory dramas" of that period.[188] With all its ghastliness, hanging was an effective and calculated tool, wielded by the Roman Empire and others, for avenging criminals and for demonstrating authority and sovereignty.[189] Pre-tannaitic halakhah evinces a similar approach, albeit curtailed by the prohibition against leaving the corpse overnight.

2. Postmortem Hanging

Tannaitic halakhah likewise understands hanging as an additional punishment, following the execution:

You might have thought that he is to be hanged alive, as is the practice of the [Roman] government. Scripture says, "And he is put to death, and hanged on a tree."[190]

This homily objects to capital punishment by hanging, which is "as the kingdom does," referring to Rome, which customarily hanged criminals while still alive, generally by way of crucifixion.[191] Conceivably, this passage might also be viewed against the background of the Jewish practice of hanging as a form of execution, which existed during the Temple period. The sources attesting to this, including the above-cited passage from the *Temple Scroll*, interpret "and is put to death" as an explanation of "you shall hang him."[192] The above statement explicitly refutes this interpretive possibility.

3. Who Is Hanged?

The Mishnah cites a debate: "All who are stoned are [afterwards] hanged: such is R. Eliezer's view. The Sages say: only the blasphemer and the idolater are

[187] *Ant* IV. 265 (vol. 4: 603); see Halperin, "Crucifixion and Strangulation," 46, n. 70.
[188] Lieberman, "Sins and their Punishments," 299–300.
[189] Regarding the penal goals of Roman Law, see Koleman, "Fatal Charades," s.1; Macmullen, "Savagery"; Hengel, *Crucifixion*, Chapter 4.
[190] *Sifre Deuteronomy* 221 (232). See also the baraita in *b. San* 46b.
[191] See Hengel, *Crucifixion*, 24.
[192] *Temple Scroll*, 64:6–13 (ed. Yadin: 1, 203–204). A similar translation appears in the *Peshitta*. See also Acts 5:30; 10:39; Gal 3:13; Wilcox, "Upon the Tree"; Baumgarten, "Hanging"; Schwartz, "The Cursed."

hanged" (*m. San* 6.4). *Sifre Deuteronomy* contains an expanded version of this disagreement:

"And you shall hang him." You might have thought that all those who are stoned are hanged. Scripture says, "For God's curse is hanging": after extending the rule, Scripture limits it. And we learn it from the case of the blasphemer: just as the blasphemer is one who extends his hand to threaten the essence (of faith) and behold he is hanged, so also all who threaten the essence (of faith) are liable for hanging. R. Eliezer says: Just as the blasphemer is characterized by being liable to stoning, and behold he is hanged, so too all who are liable to stoning are hanged.[193]

The phrase "for God's curse is hanging (*kilelat Elohim talu*i)" is interpreted as the cursing of God (the possessive referring to the object), thus highlighting the sin of the one being hanged – blasphemy.[194] Indirectly, by exegesis based on the interpretative rule of inclusion and exclusion (*ribuy u-mi'ut*), they also connote any person who denies the fundaments of faith (a heretic) – in other words, all idol worshippers.[195] However, as we shall presently observe, the sin of blasphemy played a decisive role in the tannaitic interpretation of the law of hanging. The tannaim were apparently perpetuating an ancient tradition that viewed the verses in Deuteronomy 21 as an unconditional commandment to hang the criminal and not just a prohibition against abandoning his body, whereas the sin (a capital crime) to which it applies was restricted to blasphemy and idolatry.

In the Sifre's homily, the words "for God's curse is hanging" are not interpreted literally. In the Biblical context, these words provide the reason for the prohibition of leaving the body on the tree, whereas in the *Sifre* they provide the justification for hanging it in the first place. This exegetical path is not a tannaitic innovation, as it is already reflected in the aforementioned fragment of the *Temple Scroll* and in Josephus (*Ant* 4. 202). We shall presently demonstrate that this was not the only meaning ascribed to these words in Talmudic literature. The tannaim bestowed them with an additional connotation, according to which the prohibition of leaving the body hanging was rooted in the sin for which the convict was hanged, namely blasphemy. These meanings are interconnected and merge into a unified, coherent interpretation approximating their original meaning in the Torah.

R. Eliezer disagrees with the other sages, and prescribes hanging for all those who are stoned. Similar to the exegesis of the other rabbis, R. Eliezer agrees that the phrase "for God's curse is hanging" refers to the sin of the person hanged – blasphemy. But according to R. Eliezer the punishment for blasphemy become paradigmatic for all sins punishable by stoning.[196] Presumably, according to R. Eliezer there is no specific connection between the punishment of hanging and

193 *Sifre Deuteronomy* 221 (p. 232).
194 Targum Onkelos apparently adopted a similar path: "for his liability before God he is hanged". See Sperber, *Bible in Aramaic*, 202; Bernstein, "God's Curse," 28–29.
195 See *Midrash Tannaim*, 21.22, p. 132.
196 See *b. San* 45b–46a, and compare to wording in *Sifre Deuteronomy*, ibid.

the crime of cursing. In *Sifre Numbers*, in the passage dealing with the wood gatherer on the Sabbath (Num 15:32–36), the following homily is ascribed to R. Eliezer:

> "as the Lord commanded Moses:" He said to them, "Stone him," and they stoned him. "Hang him," and they hanged him. But we have not heard the instruction that they should hang him, until it was said, "If a man is guilty of a capital offense and is put to death, then you shall hang him on a tree." (Deut 21:22) – thus the words of R. Eliezer.[197]

In this homily, R. Eliezer deduces the application of the law of hanging from the words "If a man is guilty of a capital offense and is put to death," a simple reading of which includes all those who are executed. However, as mentioned above (and in contrast to the tannaitic law), the default form of capital punishment in the Torah is stoning; burning is singled out for exceptional offenses, and decapitation and strangulation are not mentioned in the Torah. A simple, unembellished reading of the text therefore indicates that the law of hanging in Deuteronomy was only applicable to those who were stoned. R. Eliezer's understanding of the law of hanging therefore resembles that found in Josephus: both interpret the phrase "for God's curse is hanging" as referring to the sin of blasphemy, and both apply hanging to all who are stoned (whom Josephus identifies with all those liable for capital punishment). The upshot of this parallel may be that R. Eliezer's teaching is reflective of early halakhah.[198] It may reasonably be presumed that the halakhah taught by the other sages (i.e., that only blasphemers and idolaters are stoned) was the product of their creative interpretation of the verse, one which deviated from the earlier halakhic exegesis represented by R. Eliezer.

The Sages' restriction of the applicability of hanging extends even further. According to their approach, "A man is hanged, but not a woman." Here too R. Eliezer disagrees: "A man is hanged with his face towards the spectators, but a woman with her face towards the tree," and as proof he cites "Shimon b. Shetah who hanged women in Ashkelon." The Sages concede the veracity of this report, but claim that it was an emergency measure, proving this by pointing out that "he hanged eighty women, and we don't try even [two] on the same day."[199]

4. "Why was he hanged? Because he cursed God"

The tannaitic Sages' exegesis of the words "for God's curse is hanging" prompts the question as to why hanging was designated specifically for the blasphemer. What distinguishes the blasphemer from all other offenders that his punishment should be so severe? (The hanging of idolaters is an extension of the law of blasphemers; see below.) The answer to this question lies in the potency of

[197] *Sifre Numbers* 114; see also baraita at *b. San.* 47a.
[198] See Gilat, *Rabbi Eliezer*, 7–35.
[199] *m. San* 6.4.

cursing in tannaitic thought – in other words, in its capacity to seriously harm its object.

Belief in the destructive effect of curses is predicated on the principle that names and words are essentially connected to their meanings. In this worldview, language is not only a means of communication. Rather, its names and words are endowed with the features and qualities of the objects and situations that they represent. Communication is possible due to the substantive, nonarbitrary nexus between words (or linguistic representation) and objects. All objects, their characteristics, conditions, and interrelations, inhere within their lingual representations, which are, in effect, extensions thereof.[200] There is an essential affinity between names and words, and figures and icons. Both categories are vested with the qualities and substances of the objects they represent: the former in language, the latter in their figurative forms. According to this word-view, names are in effect "non-corporeal icons."[201]

The offshoots of this paradigmatic intuition are manifested in many dimensions of practical and spiritual life; it serves as the basis for the ubiquitous conception of the magical power of words and images regnant in the ancient world.[202] The attributes and powers of any object are drawn to the word representing them and are present therein. The import and power of an object determine the import and power of its name. This explains why the Divine name is the most powerful and numinous name of all. This perception of language characterizes significant parts of the Bible. Von Rad noted that the theological-ontological status of God's name and its ritual role in the Bible correspond to that of idols in other religions and cultures of the ancient Near East.[203] This conception eventually made its way into Talmudic literature, and its derivatives are present in numerous areas of halakhah and aggadah.

The tannaitic understanding of the blasphemer's felony was based on this conception. The basis of the crime of blasphemy can be inferred from the following Mishnah:

> The blasphemer is liable only if he utters the [Divine] name. R. Joshua b. Korha said: Every day [of the trial] the witnesses are examined by means of a substitute for the divine name – "May Yose smite Yose." (*m. San* 7:1)

Blasphemy is not comparable with verbal aggression, yearnings, or "wishes" given lingual expression and directed at God. The insistence on the utterance of the Tetragrammaton and in the specific formula of "May Yose smite Yose"

[200] See Tambiah, *Culture, Thought and Action*, Chapter 1, esp. 27–28.

[201] See Von Rad, *Theology*, 181–187; Fossum, *The Name of God*, 84.

[202] The fact that they function together for mystical purposes should come as no surprise. For example, in order to manifest the Godhead, or even mortals, in the image they would occasionally write their name on it, in addition to a precise sculpture of their form, and occasionally as a substitution therefore. See Faraone, "Voodoo Dolls," 175; Gager, *Curse*, 15–16.

[203] Von Rad, *Theology*, 181–187, especially 183; see also Fossum, *The Name of God*, p. 84.

[Yose being a substitute for the explicit Divine name],[204] does not merely reflect an attempt to expose criminal intent (mens rea). The crime of blasphemy is constituted, quite simply, by an act of verbal violence – in other words, by the substantial damage actually wrought by the words. The components of the curse are precise, being akin to a quasi-magical formula by means of which the blasphemer diverts the powers inhering in the name of God against God Himself or, in the phrasing of the baraita in *Bavli Sanhedrin* 56a, "[The blasphemer] is not punished unless he 'blesses' the Name by the Name."[205] Only the divine powers vested in the explicit name of God can actually affect God. Any other form of expression, however inimical it may be, is essentially weak and lacking in any real capacity to harm.

The danger involved in the utterance of The Name compelled the court to conduct its proceedings through appellations. Tannaitic halakhah was meticulously strict in the examination of witnesses and the verification of facts.[206] In the above context, the extreme caution adopted in ascertaining the primary foundation of the offense – the precise verbal formulation that issued from the blasphemer's mouth – seems to reflect the presumption that the actual utterance of the Name, even without hostile intention, is a fundamentally violent act. Nonetheless, the blasphemer could not be convicted unless there was unequivocal and explicit testimony regarding his specific words:

> Once the trial was concluded, they do not execute [him] on the basis of [testimony using] a substitute name, but rather all persons were removed [from the Court], and the chief witness was told, "Say explicitly what you heard." Thereupon he did so, [using the explicit name]. The judges then arose and rent their garments, and they do not mend them. The second witness stated: "I also as he"; and the third says: "I also as he."[207]

The concrete effect of the curse is further indicated by the obligation of rending the garments, resembling rending upon hearing of the death of a relative.

Returning to the subject of the hanging itself, our conclusion regarding the destructive nature of the curse explains the dual punishment of the blasphemer. Invoking the Divine name is the ultimate means of harming God. In this sense, the act of blasphemy may be referred to as "negative theurgy." God responds with a quasi-curse, a counter desecration. At a later stage, the tannaim extended the punishment of hanging to include idolaters as well, but the predominant offense was that of blasphemy; we shall presently observe that it determined the nature of the hanging procedure. Accordingly, the tannaim preserved the

[204] According to Rashi, the Hebrew numerological value of the word *Yose* is equivalent to that of *Elohim* [God]. A number of scholars have noted that the expression in *m. Suk*. 4.5 (*yofi* ...) is an appellation for the Name of Four Letters; see Epstein, *Introduction*, 928–929.

[205] Regarding the expression *bashem* as a form of adjuring, see *t. Ned* 1: "in the Name, it is equivalent to a vow." See also Albeck, *Mishnah*, *Moed*, 470; Lieberman, *Studies*, 94.

[206] *m. San* 5.1; *m. Avot* 1.9.

[207] *m. San* 7.10. The insistence on the specific name of God is also evident in other contexts. See, e.g., *b. Eruv* 13b.

character of hanging as a punishment singled out for traitors and rebels, but its target was diverted from the earthly kingdom to that of the Divine.

The commandment to hang the blasphemer can be understood as a form of *lex talionis*. Just as the curse abases and damages God, so too the act of hanging, especially after the execution, abases and damages the blasphemer. Conceivably, this understanding is rooted in the words "For God's curse is hanging," which now acquires a dual interpretation. To the first sense, signifying the sin of the person hanging, who cursed God (possessive of the object), there is added a second sense: God (who has been cursed) responds with a curse, in other word with an abasement and vilification of the blasphemer, by ordering him to be hanged (possessive of the subject). These two meanings are intertwined, because the order to hang the executed is a kind of *quid pro quo*. Or, in the Mishnaic formulation: "For what reason is this one hanged? Because he 'blessed' the Name."[208] However, as we shall presently observe, even this did not exhaust the tannaitic elucidation of these verses. The second sense automatically leads to a third sense, which combines the law of hanging and, as I shall presently assert, all of the rules governing capital punishment, with the conception of man as being created in the image of God.

5. "One ties him up and another unties him"

It remains for us to discuss the hanging procedure, whose details are crucial for our purposes. "They would bury the post into the ground and the wood protrudes from it [at the top]. He ties his hands together one over the other and hangs him . . . and they unbind him immediately" (*m. San* 6.4). Conceivably, the tying of the man's hands together, around the beam, may allude to an intentionally created distinction between rabbinic hanging and crucifixion ("as the kingdom does").[209] In any event, the decisive detail for our purposes is the immediate unbinding. This detail is also mentioned in *Sifre Deuteronomy*, with an additional restriction: "'His corpse shall not remain all night upon the tree – but you must bury him.' This is a positive commandment. What do they do to him? They wait until [just before] night and then hang him, after which they untie him."[210]

According to a baraita cited in the Bavli, they even postponed the declaration of the verdict until just before sunset: "He is first put to death and afterwards hanged. How is this done? They delay the verdict until just before sunset. Then they pronounce judgment and put him [immediately] to death, after which they hang him."[211] The postponement of the verdict (according to the baraita) and the performance of the punishment just before sunset (according to both the

[208] *m. San* 6.9; cf. *Sifre Deuteronomy* 221 (p. 232).
[209] *b. San* 46b; *Sifre Deuteronomy* 221. See also in *Midrash Tannaim* 21:23 (p. 123).
[210] *Sifre Deuteronomy* 221 (p. 254); in the Vatican manuscript: "and he is immediately released."
[211] *b. San* 46b; see also *Midrash Tannaim*, 21.23 (p. 132).

baraita and *Sifre Deuteronomy*) effectively reduce the duration of the hanging to a minimum. This ought to be understood against the background of the interpretation (or tradition) found in Philo and Josephus who both depict the hanging as continuing the entire day. Delaying the verdict and execution until sunset was a kind of self-imposed constraint of the Sages designed to leave only a short time slot, during which it was only possible to perform a symbolic hanging. In the words of the Tosefta: "One ties him up and another unties [him], in order to fulfill the mitzvah of hanging."[212] Despite slight discrepancies in certain details, the common factor in all these sources is that they limit the hanging to the extent of it becoming a purely symbolic act.

The Mishnah provides the following explanation for the drastically abbreviated hanging:

> And they untie him immediately. And if he is left [hanging] over night, they thereby transgress a negative commandment, as it says, "You must not let his corpse remain on the tree overnight, but must bury him the same day, for God's curse is hanging" (Deut 21:23). As if to say: Why was he hanged? Because he cursed the name [of God], yet it turns out the name of Heaven is desecrated."[213]

This paragraph must be read closely. It may be divided into three parts: The first is the law of untying, which orders the untying of the hanged person immediately after his hanging. This is so, because to do otherwise would formally be deemed a violation of the negative commandment of leaving his body on the tree (at night). This rule must be distinguished from another negative commandment cited further on in the chapter, proscribing the leaving of any body unburied. The practical meaning of this is the obligation to bury on the same day as the person died.[214]

The second section presents a Biblical prooftext (Deut 21.23) for the law of unbinding. This midrash is certainly not the literal meaning of the verse, because the verse does not mandate an immediate release, but only prohibits leaving the body on the tree after nightfall. It does, however, cohere with the original context of the words "for God's curse is hanging" which explain the prohibition of leaving the body on the tree. But, as we noted above, the same words also served the tannaim in their elucidation of another halakhah indicating the sin committed by the person being hanged and the reason for his hanging.

The third part of this passage is intended to resolve this difficulty: "As if to say: Why was he hanged? Because he cursed the name [of God] and it turns out the name of Heaven is desecrated." The words "God's curse is hanging" are given two, or possibly three, meanings, none of which stand alone. Together they converge into a quasi-dialectic conceptual construct, which explains the

212 *t. San* 9.6 (p. 429).

213 *m. San* 9.6; see also *Sifre Deuteronomy* 221 (p. 254).

214 The two prohibitions are different, because while a dead person may be left unburied as a token of respect, under no circumstances may the hanged person be left on the gallows.

tannaitic design of the symbolic hanging. The first explanation – God's curser (the blasphemer) induces the commander (God) to order his hanging – was discussed above. This explains why the blasphemer is hanged. The words "and it turns out the name of Heaven is desecrated," provide an additional explanation which, while based upon the previous ones, also undermines them, to the extent that it provides the reason for immediately untying. Hanging causes the desecration of the name of Heaven, and must therefore be reduced into a symbolic act: "one ties and another unties." According to this explanation "God's curse is hanging" again refers to God who is cursed (possessive of the object), but this time in a different sense: The hanging itself, or perhaps the hanged person but not his words, causes the desecration of God's name. The first interpretive process (in its two stages) therefore explains the reason for hanging, whereas this third stage provides an opposite claim – hanging itself causes God to be cursed. The symbolic hanging ceremony thus represents an attempt to balance between these two interpretations.[215]

How does hanging desecrate the name of Heaven? According to Rashi the name of Heaven is desecrated as a result of passersby who "mention that this is the person who cursed," thereby repeating the curse. In order to prevent such comments, the hanged person is taken down immediately. Rashi explains the Mishnah almost literally, "Because he cursed … and so it turns out …." According to Rashi, the hanging itself does not profane; rather, it indirectly leads to additional desecration, similar in nature to the original desecration. The difficulty in this explanation lies in its reliance upon the passersby, of whom no mention is made in the Mishnah. His interpretation is based upon R. Meir's parable, cited in the Tosefta (and in a baraita, *b. San* 46b). However, a careful reading of this parable (to be discussed at length later) indicates that the role assigned to the passersby does not exceed the boundaries of the parable. The actual desecration – the parable's meaning – is of a different nature, and does not involve the passersby. Ostensibly, Rashi's explanation is supported by the phrase "the name of Heaven [is desecrated]," which may be taken to indicate actual verbal desecration of God's name. However, the use of these words in rabbinic sources does not necessarily denote the use of the Tetragrammaton or any other verbally expressed name. Rather, as indicated by the continuation of this Mishnah, "the name of Heaven" in this context designates (as a kind of metonymy) God Himself or His presence.[216]

An additional difficulty with this interpretation is raised by the phrase "as if to say" (*kelomar)* with which the third part of the passage begins. The phrase is

[215] The attribution of multiple meanings to a single Biblical verse by a midrash is a phenomenon that has been dealt with extensively in scholarship. See Stern, *Midrash*; Fraade, *From Tradition to Commentary*, 123 ff. An interesting point here, which I also dealt with earlier, is that the various interpretations of the word "curse," etc., are not distinct, but rather constitute one complex interpretation.

[216] See, e.g., *Sifre Deuteronomy* 306 (p. 328). Regarding the term "Heaven" as denoting God in tannaitic literature, see Urbach, *The Sages*, 71, nn. 17, 18.

only rarely used in Talmudic literature, especially in its tannaitic stratum. Avinoam Cohen has demonstrated that in all of its occurrences in tannaitic literature, the phrase "as if to say" denotes the purpose and rationale of a particular matter and the interpretation of actions performed in public in order to disseminate the idea embedded in them.[217] Rashi's proposal is not consistent with this interpretation, for according to his interpretation, removing the hanging criminal from the tree comes neither to proclaim nor to publicize an idea. To the contrary, its aim is to conceal the hanging criminal (and by extension – the act of hanging) from the public eye so as to prevent any mention of his offense.

The Mishnah establishes that the hanging person's body in itself "desecrates the Name." In other words, God or His image is thereby desecrated; in order to prevent such desecration, the body is immediately untied. That the hanging body desecrates God embodies the conception of man as created in the Divine image. According to this conception, God inheres in His image, and man created in the Divine image constitutes a quasi-extension of the Divine. Consequently, the degradation and decomposition of the image are equivalent to the degradation and decomposition of God Himself. In this view, the curse of the Image (in terms of the possessive of the subject) are by definition a curse of God (possessive of the object).

This complex exegesis of "for God's curse is hanging" (*kilelat Elohim talui*) is based upon iconic ontology, regarding both lingual and figurative representations. This comes as no surprise, as during ancient times these representations are almost inseparably intertwined.[218] Blasphemy as an offense, which explains the reason for hanging, is premised on the assumption that God is present in His name, whereas the explanation for the symbolic hanging implies that God is present in his image, the body of the hanged criminal. The word "and it turns out" in the third part of the passage is related to the hanging itself, being the immediate and direct reason for the desecration of the Name, and not the curse (as per Rashi). The sentence "Why was he hanged? Because he cursed the name [of God], and it turns out the name of Heaven is desecrated" expresses the inherent irony of the situation: God responds to the blasphemy by cursing [the blasphemer] and commanding his hanging, yet is Himself cursed as a result of the hanging. This irony is the core of R. Meir's audacious parable, which will be discussed below.

The act of hanging and untying incorporates two antithetical elements. The hanging itself, especially after the execution, is a humiliating and debasing act. But the mishnaic depiction of symbolic hanging expresses a conflicting notion. Against the background of degradation and horror that characterized the prevalent practices of postexecution hanging, the tannaitic symbolic hanging

217 Cohen, "Ke-lomar," 190–192.

218 Gager, *Curse*, 15, and his references, Faraone, "Voodoo Dolls," esp. 175; and see also the example cited by Hallo, "Prayer Letters", p. 25.

was an exceptional and peculiar spectacle, involving an *act* of hanging without a subsequent *state* of hanging. A gesture of this nature is thought-provoking and invites explanations – which were indeed given, as will be noted, both in the Mishnah and in other tannaitic sources. By means of this paradoxical ceremony, the tannaim intended to condemn the convict (or more precisely – the executed convict) while simultaneously proclaiming that he was in the image of God: as if to say, irrespective of the gravity of his crime, this neither obscures nor detracts from the fact that the convict like every human being is an image of God.

But this truncated hanging procedure is not merely a symbolic gesture expressing an abstract idea or value. The act of removing the corpse also had a substantial dimension for, being premised as it is on the conception of the image, it was designed to prevent harm to God, who is present in the human body, even the body of a criminal. Removing the corpse from the tree effectively neutralized the hanging itself, constituting a kind of preventive theurgy. The passage began, therefore, with negative theurgy (cursing "the Name by invoking the Name"), which necessitated hanging the blasphemer. However, due to the fear of (the additional) negative theurgy involved therein, it concludes with the preventative theurgy of "one ties and another unties." This claim will be elucidated in the following chapter.

Tannaitic halakhah introduced substantial changes into the laws concerning hanging: it was only applicable after the execution; it was restricted (according to the majority view of the Sages) to male blasphemers and idolaters; and, most important, it was transformed into a symbolic act. Hanging without taking down (at nightfall) was the prevalent practice in the surrounding cultures of antiquity. Deuteronomy transformed the practice into hanging and taking down (the prohibition of leaving the corpse), and the Rabbis further transformed it into what we might call, "taking down without hanging." We will presently see that in designing the act of hanging as a symbolic gesture the rabbis intended to declare that man was an image of God. Furthermore, they created these laws in order to prevent the disfiguring and debasing God Himself, who is present in His image. The laws of hanging are derived from the quasi-dialectic exegesis of the obscure Biblical phrase "for God's curse is hanging," according to which the curse of the hanging (corpse) is essentially the curse of God inhering therein.

The law of hanging is consonant with the general rabbinic redesign of the laws of judicial executions. The rabbinic formulation of these executions (apart from decapitation) evinces a clearly discernible tendency to preserve the body and prevent its mutilation and debasement. The mishnaic description of hanging, like that of other forms of execution, is a tannaitic innovation. There is no trace of its specific halakhot, its restriction to the blasphemer, and its transformation into a symbolic act, in pre-Talmudic sources. In the *Temple Scroll* (as in other Qumran texts), in Philo, in Josephus, and in evidence embedded in Talmudic literature, the descriptions are of real hanging, both degrading and disfiguring. The interpretations of "for one hanged is a curse to

God" found in pre-tannaitic Jewish literature underscore the innovative aspect of the tannaitic exegesis, for only here is hanging itself considered to cause harm to God. To the best of my knowledge, the tannaim were the first to interpret this phrase in view of the conception that man was created in God's image.

The tannaitic notion that the hanging of a human being desecrates the name of God explains why "death at the hands of Heaven leaves no mark," and why the Rabbis structured the judicial executions as a replication of that form of execution. I will argue later that even this idea of the divine mode of execution is premised on the notion of human beings created in the Image. God does not leave an imprint on man, even when executing him, in order to prevent damage to His own image. The court follows in the same path. Preservation of the corpse of the convict in the execution procedure and in the neutralization of the hanging purports to prevent the desecration of the Divine name. This hypothesis will be clarified and expounded in the following chapter, which deals with the tannaitic sources that explain the law of hanging, and which indicate the image conception on which this law is based.

6

Image, Likeness, and Presence

In this chapter, I will attempt to substantiate my claim that the concept of humanity's creation in the image of God received an iconic sense in Talmudic literature, and that the underlying concept in numerous midrashic sources, of the figurative resemblance of human beings to their Creator, also implies the Divine presence in them. I will also attempt to show that this conception is the foundation of the *halakhot* discussed in Chapter 5. The first part of this chapter discusses those Talmudic sources that demonstrate that the idea of creation in the image, in its iconic sense, underlies the law of hanging. The central focus of this chapter is found in Section II, in which I analyze those sources that ascribe to the concepts of "image" (*zelem*) and "likeness" (*demut*) in general, and to that of creation in the Divine image in particular, the element of "presence." In Section III, I will return to judicial executions, and demonstrate that the conception of Imago Dei provided the blueprint for their construction.

I. THE LAW OF HANGING AND THE IMAGE OF GOD

1. "My head is heavy, my arm is heavy"

R. Meir said: When a man suffers, what does the [Divine] tongue say? "My head is heavy, my arm is heavy." And if thus the verse says, "I suffer for the blood of the wicked," how much more so for the blood of the righteous that was shed.[1]

This Mishnah appears directly after the law of hanging, combining hermeneutic creativity with religious-theosophic audacity. R. Meir's aphorism weaves a number of different aspects into a complex conception, based on the recognition of God's presence in man. It will presently become clear that R. Meir anchored this intuition in the conception of the human being as an image of God. The first part of his statement is a homily on the Biblical phrase "God's curse is hanging" (Deut 21:23), which I discussed at length in the Chapter 5. For R. Meir, this

[1] *m. San* 6.5.

phrase indicates God's moan of lament at experiencing the grief of the person hanging. His words are directed at the previous Mishnah, which prohibits leaving the convict's corpse hanging on the tree lest "the name of God be desecrated." Thus, this Mishnah begins with a theosophic insight, suffused with the pathos evoked by the halakhic reason that preceded it.

R. Meir's aphorism is not limited to the law of hanging. From God's lament he derives two conclusions. The first is: "If thus the verse says, 'I suffer for the blood of the wicked,' how much more so for the blood of the righteous that was shed." In this section, we will focus our attention upon the opening phrase, while in the final section of this chapter and in Chapter 7 we will address its conclusion. R. Meir's aphorism alludes to a hermeneutic wordplay in which the word *kilelat* (curse) is related to the word *kal'ini*, which is ascribed to God or to the Divine Presence (*shekhinah*).[2] Scholars and Sages have wrestled with the etymology of the rare word "*kal'ini*" and its numerous variant readings since the time of the amoraim, through that of the Geonim and Rishonim, and finally, down to contemporary philologists and scholars.[3] Most of those who have addressed the issue interpret the word *kal'ini* as implying heaviness: "My head is heavy and my arm is heavy" – in other words, my head aches and my arm aches.[4]

Y. N. Epstein, by contrast, interpreted the word *kal'ini* (or *kalani*, as it appears in printed editions of the Mishnah) as being derived from *kalah* (*kila*; in Syriac: *kala*) which means ignominy and shame,[5] as in "I am embarrassed by your words" (*b. Hag* 22b). Epstein further observed that in Syriac, the word "suffers," as in our Mishnah "when a man suffers ... I suffer for the blood," denotes not only pain, but also shame. In his view, R. Meir's saying is concerned with degradation and shame, and its meaning is: "When a man is degraded [or mutilated], what does the tongue [of God or the Shekhinah] say: 'My head is shamed; my arm is shamed." Epstein's linguistic analysis is appropriate for the context of hanging, whose entire essence is intended to degrade and to mutilate the convict. It would seem, however, that the scope of R. Meir's teaching is considerably broader than hanging alone, for it is difficult to escape the

[2] The version, "*Shekhinah*, what does the tongue say? *Kal'ini* ..." is found in manuscripts of the Bavli and the Yerushalmi and in printed editions, but does not appear in manuscripts of the Mishnah itself. See Epstein, *Introduction*, 87.

[3] Ibid., n. 87.

[4] For detailed discussions, see Yalon, *Introduction*, 89–91; and Epstein, *Introduction M*, 87–88. According to the Yerushalmi (*San* 6.10 [23d]) it reads *kal eini*, meaning "I am not light," i.e., my head is heavy and my arm is heavy, as in the expression *koved rosh* (literally: "heaviness of head" – i.e., seriousness; *m. Ber* 5.1), and "the hands of Moses were heavy." This is also the meaning of a baraita, which reads *Kal ani* ("I am light"), where it is clearly a euphemism for heaviness. Similarly in *b. San* 46b Abaye and Rabba argue over the interpretation of this expression: "Abaye said: As one who said: 'It is not light.' Rabba disagrees saying, 'If so, he should have said "my head is heavy" (*kaved*) upon me!' Rather, Rabba said: As one who said: 'The world is light to me'" (in accordance with the manuscript).

[5] See Epstein, *Introduction*, 87, n. 2; and cf. Payne Smith, *Thesaurus Syriacum*, 482, who observes that *tsa'ar* in Syriac is a combination of suffering, contempt, and humiliation.

impression that the teaching is essentially evocative of pathos and suffering. The "suffering" referred to in its concluding section ("I suffer for the blood of the wicked") is apparently caused by death as such, and does not seem to be confined to ignominy alone. Moreover, it centers on the suffering of particular limbs – the head and the arm,[6] where the pain is focused – whereas ignominy and shame are experienced by the personality or by the entire body, and not just by a particular part thereof. Thus, R. Meir's teaching seems to combine degradation with suffering, which in executions, and specifically in hanging, are both naturally and necessarily interconnected.

One might ask: How can degradation and suffering be associated with a corpse? In point of fact, the Rabbis imputed both awareness and sensitivity to the corpse, as a result of which a corpse may suffer and experience humiliation. Saul Lieberman addressed this point in his analysis of the tannaitic sources that expound on the "life" experienced in the grave.[7] This notion is rooted in the monistic-somatic anthropology that was prevalent among the Sages, which identified a person's vital powers – his personality, his consciousness, his senses, and so on – with his body. These powers ebb with the consumption of the flesh and the evanescence of its form.

Though not explicitly mentioned, there is no doubt that God speaks the words "*kal'ini* . . . ." This is supported by the continuation, "if thus the verse says . . . ."[8] One might have surmised that the question "what does the tongue say" and the response "My . . . is heavy" (*kal'ini*), relates to anyone capable of identifying with the pain and degradation of the hanging person. Nevertheless, the heart of the teaching lies in God's empathy and perhaps even identification with the hanged. While later versions of this Mishnah (found in the Bavli, the Yerushalmi and printed editions) read, "When a person suffers, what does the *shekhinah* say"[9] are clearly not original, they succinctly express the original intent of the Mishnah.

R. Meir's aphorism relies on an audacious anthropomorphism that ascribes to God a head and an arm with which he feels and suffers, and a personality sensitive to degradation and shame. But more than the corporality attributed to God, we are amazed by the identification of God's suffering and ignominy with the suffering and humiliation of a convict condemned to postmortem hanging.

6 It is possible that these limbs were singled out due to their being the place where the tefillin are placed. In many midrashic sources God is described as wearing tefillin. See *b. Ber* 6a, 7a, *b. Hag* 13a; and see Lieberman, *Sheki'in*, 13–14.

7 Lieberman, "After Life," 506, refers to *y. Avodah Zarah*.3 (42c), *Genesis Rabbah* 47.29 (p. 1237, *b. Berakhot* 18b.

8 This was indeed the understanding of most commentators. See Scholem, *Basic Concepts*. In a number of versions of the Mishnah, the words for "Scriptures" is replaced by "The Holy One blessed be He" (e.g., in MS. Munich and in MS. Oxford 366) or by *ha-Makom* (lit. "the Omnipresent," meaning God; e.g., in the Yemenite manuscript of *Sanhedrin* and in versions of the Mishnah). Some of the printed editions reads "the Divine Presence, as it were" (e.g., Albeck, *Mishnah, Nezikin* 188).

9 See Albeck, *Mishnah, Nezikin* 188.

The personification found in R. Meir's statement is a presupposition of a more radical move, which further blurs the barrier between the human and the Divine. The audacity of R. Meir's comments prompted some commentators and scholars to suggest that, even though the cry *kal'ini* issues from God, it is no more than an expression (albeit by way of hyperbole) of human suffering.[10] However, a contextual reading of this saying and consideration for other related midrashim, some of which originate with R. Meir, indicates that its scope cannot be limited exclusively to ethics and halakhah. A similar idea is ascribed to R. Meir in *Midrash Tannaim*[11]: "And you forgot the God that brought you forth (*mehollelekha*)" (Deut 32.18): R. Meir says: "Who is in pain because of you (*hal bekha*), and suffers because of you, as it says 'Like a woman in the throes of labor' (*hil kayoleda*)" (Psalms 48:7).[12] In this midrash, too, R. Meir merges heaven and earth. In the background of the homily lies the first half of the verse from Deuteronomy, "You neglected the Rock that begot you (*tzur yeladekha teshi*)." The word "begot [you]" enables R. Meir to connect the second half of the verse with the verse in Psalms, which deals with the pain of a woman giving birth. As opposed to the homily in *Mishnah Sanhedrin*, here God's pain (i.e., his weariness, a play on *teshi*) results from man's actions, and not from his pain. The image of birth pangs links the substantive connection between man and God to the suffering that man causes God. The word *meholleleka* is understood in light of the word *hil* – in other words, the pain caused by the embryo in its mother's womb. Thus, the embryo's connection to the mother is analogous to man's connection to God. Just as the "embryo is its mother's thigh" (*'ubar yerakh imo*), so too man is inseparable from God, like one of his limbs.[13] Conceivably, the wording *hal bekha*, which I have translated as "sick from you" may also evoke a connotation of the homonymous "inhering within you" as a result of which He "suffers with you."[14] In the same midrashic cluster in the *Midrash Tannaim* (ibid.) we find a similar midrash, explaining a similar idea in even more poignant terms:

"You neglected the Rock that begot you" (Deut 32:18): The Holy One blessed be He said to them: You have made me like a male attempting to beget a child and cannot beget. For when a woman sits on a birthing stool, does she not suffer? And if there are two in her womb does she not suffer, as it says: "The children have come to the birthing stool, but the

[10] Scholem, *Basic Concepts*, 150, but see his reservation in n. 26, *ad loc*. See Geiger, *Articles*, 57; Altmann, "Imago Dei," 17–18; Urbach, *The Sages*, 217.

[11] *Midrash Tannaim*, 32.18 (p. 195).

[12] This is a wordplay based on the common root *hy"l*.

[13] See, e.g., *b. Suk*. 9a: "Just as the Name of Heaven falls on the festal offering (*hagigah*) so too does it fall on the sukkah." There are other similar examples in rabbinic literature.

[14] A similar exposition of these words appears in a parallel homily found in *Sifre Deuteronomy* 319, p. 328, "And you forgot the God that bore thee (*mehollelekha*)" (Deut 32:18) … The God who made His name rest (*hehil*) upon you, that which He did not cause to rest (*hehil*) upon any other nation or kingdom." See also *Sifre Deuteronomy* 31, p. 58, "Why does Scripture say, 'the God of Israel'? Upon Israel His name rests (*hehel*) the most."

strength to give birth is lacking" (2 Kings 19:3). And if she is sick and gives birth to her first child, is she not in pain, "I hear a voice as of one in travail, anguish as of a woman bearing her first child" (Jer 4:31). And if it is a male whose way is not to give birth, will not his suffering be doubled, as it says "Ask and see, surely males do not bear young." (Jer 30:6)[15]

The affinity between these two homilies is evident: They both expound different parts of the same verse, and both express a conception of presence and suffering by way of "birth pains." However, the metaphor in the second one is sharper: "You have made me like a male attempting to beget a child and cannot beget." In order to amplify the intensity of the pain, the homily depicts an ascending scale: "when a woman sits on a birthing stool," "two in her womb," "she is sick and gives birth to her first child," and at its peak "the male whose way is not to give birth, will not his suffering be doubled?" In the words of the prophet, the image of the male attempting to give birth underscores the enormity of the shock and pain that will engulf "every male" on the day of reckoning. The midrash uses this metaphor to describe the intensity of the pain and suffering sustained by God due to human actions.[16] The starkness of the imagery in its midrashic context derives from the reason for the unparalleled pain: the connection that binds the male to his offspring. In other words, human beings are a quasi-extension of the Divine. His presence in them is "natural" and the suffering that they cause Him by their actions will never abate because they are inseparably connected.[17]

The contents and context of these homilies are theurgic; the pain and suffering occasioned by man's actions are simultaneously felt by God. The conception of immanence common to both homilies and to R. Meir's statement in *Mishnah Sanhedrin* indicates that the latter cannot be reduced to the realms of ethics and halakhah alone.[18] R. Meir illuminates the Biblical phrase "for God's curse is hanging" by identifying the suffering of the convict with that of God. This identification serves to explain why hanging "desecrates the name of Heaven," and in doing so explains why the Mishnah transforms postmortem hanging into a purely symbolic act. The passages in *Midrash Tannaim* support this way of reading, but do not really help us overcome the wonderment which they provoke. How is one to understand such a concrete merger between the human and the Divine? What metaphysics can explain a conception that posits two separate objects as distinct, and yet present in each other, especially if one of them is God?

[15] *Midrash Tannaim*, 32.18; see parallel in *Sifre Deuteronomy* 319.
[16] See *b. San.* 98b; Lieberman, *Sheki'in*, 64.
[17] In this context, the connection is between God and Israel, but the underlying foundation of this midrash, and other similar midrashic passages, is not the national-particularistic element, because the emphasis is not on the uniqueness of Israel, but rather on the performance of the commandments. It is important to distinguish between resemblance to God in "likeness and image" – that is, in being as such, which is a universal category – and resemblance to him by virtue of actions and deeds, which is unique to Israel.
[18] See Flusser and Safrai, "Rabbi Meir" (esp. at n. 6).

R. Meir was apparently sensitive to the astonishment that might be occasioned by his statements, and therefore added another parable to explain them.

2. "Two Twin Brothers"

Immediately after prescribing the manner of hanging – "one ties and the other unties" – *Tosefta Sanhedrin* cites the following parable in the name of R. Meir:

> R. Meir used to say: What does the Torah mean when it says "For God's curse is hanging"? [It is comparable to] two identical twin brothers: one was king over the whole world and the other took to banditry. After a while the one who took to banditry was caught and they crucified him on the cross, and every one who went by would exclaim, "It looks like the king is hanging." Therefore it says, "For God's curse is hanging."[19]

A slightly different version appears in the Bavli in explanation of the Mishnah beginning "Why was this one hanged ... ?"[20] It would seem that R. Meir's parable was also intended to explain his own words in the Mishnah ("*kal'ini me-roshi* ..."), which also explains the previous Mishnah. We thus have three sources, *Mishnah Sanhedrin* 6.4 and 6.5 and the above Tosefta passage, all of which interpret the words, "for God's curse is hanging," two of which are ascribed to R. Meir. Clearly these sources must be read as a single complex.

R. Meir's parable is not merely a rhetoric embellishment or a didactic device intended exclusively to persuade and influence. Rather, it is a "hermeneutic parable," designed to enable both the student and the homilist himself to "fathom the words of Torah."[21] The goal of a hermeneutic parable, in contrast to a rhetorical parable, is to reveal a new understanding of the halakhah; and, as noted above, the halakhah in this case – the manner of hanging and the expression *kal'ini* – require elaboration. I would claim that the parable of the twin brothers embodies an ontological principal concerning "the image as presence." This elusive principle explains the relationship between humanity and the Creator, and supplies a theoretical underpinning to explain the law of hanging and the use of the phrase *kal'ini me-roshi* ... .

The heart of the parable, which compels its dramatic reversal, is the similitude of the twin brothers. One of them ascends to fame and becomes a king, while the other becomes a bandit. The bandit's criminal activities undermine the sovereignty of his twin, the king, and the latter, upon apprehending him, orders him to

[19] *t. San* 9.7 (227–228).

[20] See the version in *b. San* 46b, where it reads: "It has been taught: R. Meir said: They made a parable. To what is this matter comparable? To twin brothers [who lived] in one city: one was appointed king, and the other took to banditry. The king commanded and they hanged him. All who saw him exclaimed, 'The king is hanging'! Whereupon the king commanded, and they took him down."

[21] *Shir ha-Shirim Rabbah*, 1:1.

be hanged.[22] The king soon realizes the enormity of his mistake: the stunning resemblance between himself and the hanged man undermines his stature because his subjects think that "the king has been hanged," and so he orders him to be taken down immediately. The resemblance between the two brothers is primarily a physical one. The *Tosefta* version emphasizes that they are "two twin brothers who resembled each other" – in other words: identical twins – and, needless to say, the mistake of the passersby is based entirely upon this physical similarity.

The point of the parable is clear: the brother who became a king is God, while the one who became a bandit is the person hanged (mentioned in the Mishnah) who, like all other men, "is created in the image of the God" (Rashi). In *Avot de-Rabbi Nathan*, R. Meir provides a more general expression of the conception of creation in the Divine image clearly implied in the above Tosefta passage when he repeats the tradition familiar to us from his teacher, R. Akiva (*m. Avot* 3.14): "Beloved is man, for he was created in the Image; as it says 'For in the image of God did He make man.' "[23]

The parable of the twins, combined with the expression *kal'ini*, illuminates the mishnaic law determining the method of hanging. The halakhic-dialectic assertion forming its basis ("Why was this one hanged? . . .") is translated by the parable into a dramatic saga; the tying and the immediate untying of the bandit is parallel to the mishnaic law: "one ties him up, and the other unties him." The king's command to hang him alludes to the Biblical command "and you shall hang him . . ." which in turn implies the command of "one ties him up."[24] The command in the parable to "take him down" is parallel to the halakhah instructing "and they take him down immediately," which is explained in the Mishnah, "lest the name of Heaven be desecrated." The parable of the twin brothers, like the halakhic argumentation which it elucidates, was not intended to eliminate hanging altogether, but rather to explain its symbolic nature.[25]

As mentioned, R. Meir's parable purports to explain how the pain and degradation of the person hanging is also the pain and degradation of God. He elucidates the nature of this convergence via the "image" relation. In contrast to contemporary modes of thought, which seem to deny any ontological connection between an object and its image, in the ancient mindset similarity

[22] According to the version in the Tosefta, the hanging was done by crucifixion; see Baumgarten, "Hanging," 8. Rabbi Meir's homily apparently reflects the policy of Roman provincial governors to hang/crucify bandits. This policy is discussed in Hengel, *Crucifixion*, 49–50.

[23] *Avot de-Rabbi Nathan*, Version A, 1: 39; p. 162.

[24] Both the ancient Jewish tradition and the rabbinic tradition understood the section on hanging in Deuteronomy 21 as establishing an unconditional command to hang convicted criminals, whereas according to the literal sense of the Bible it would appear to be a contingent provision. See *supra*, Chapter 5.VI.1–2

[25] Rabbi Meir's parable differs from Rashi's explanation of the mishnaic law of hanging, according to whom the name of Heaven is desecrated "when they mention that this one desecrated the name" (*b. San* 46a, *s.v. shem shama'im*).

between two objects entails an ontological connection between them – one is present in the other. The parable invokes a relationship based on similitude, which implies an ontology of presence, and applies it to humanity and God. In doing so, it explains the mishnaic assertion that God suffers and is degraded together with the hanging person. The conception of image as presence, which includes a causal connection between the image and its prototype (or between the different images), will be dealt with below.

In understanding the parable we are not supposed to interpret the impression of the passersby that "the king is hanging" as wrong. If we were to interpret the order to take down the twin-bandit brother as a result of the peoples' misconception and that in reality the king is not hanging at all, then the moral of the story would be puzzling, if not fallacious. According to this (mistaken) interpretation, the reason for sufficing with symbolic hanging is rooted in the ubiquitous human tendency to confuse man with God. But it is clear that the parable intends a different and even antithetical meaning. It is not merely concerned with the above-mentioned widespread but mistaken view, which nevertheless must be taken into consideration. Rather, it expresses a metaphysical conception of the relationship between God and humanity. The passersby's initial impression is not altogether mistaken: the identification of the king with his bandit-brother has a grain of truth. The isomorphic relationship is based on the fact that they are identical twins, indicating that the barrier between them (both in the parable and its moral) is not absolute.

A reader having difficulty with the concept of "image as presence" and who is skeptical whether it is connected with the parable of the twin brothers, may be assisted by reading it in conjunction with another aspect thereof: the expression *kal'ini* . . . . The parable and that which it is intended to symbolize reinforce one another. The parable using the expression, *kal'ini*, which implies God's presence in man, in symbolic fashion, is instructive regarding the iconic sense of the image implied in the parable. The parable, on the other hand, provides a quasi-theoretical foundation that explains how such presence is possible.

The iconic sense of the parable is indicated by the fact that its characters not only resemble one another, but are also brothers; moreover, they are (identical) twins[26] – as if to say: the king and the bandit emerged from the same womb, so that even though their ways parted (in both senses) they did not in fact separate from one another. The plot of the parable supports this reading because their respective fates, which are as it were determined by their shared experience, cause them to reunite. The immense chasm that separates them – one with a

[26] Generally speaking, in Talmudic "king parables," the characters, apart from the king himself, consist of his son, his ministers, servants, and subjects. See Stern, *Parables in Midrash*, 19–21. I am unaware of any other parable in midrashic literature whose protagonists are the king and his twin. Twinship is neither a conventional nor a formalistic aspect of the parable, and it therefore invites an explanation on the ideological level; see immediately below. In the *Mekhilta de-Rabbi Ishmael*, *Vayehi* 3 (p. 99), the Holy One blessed be He is a brother (and not a twin) of Israel. See also in Hebrews 1:11–12.

crown on his head and the other with a rope around his neck – cannot obscure the fact that, as the famous rabbinic saying goes, they are *'arevin zeh ba-zeh*, literally: "mixed in one another" (hence, "responsible for one another").[27]

The interpretation connecting the phrase *kal'ini* with the parable of the twins is supported by the following midrash from *Exodus Rabbah*:

R. Yannai said: Just as in the case of twins, if one of them has a headache the other one [feels the pain], so it is as though the Holy One, blessed be He said: "I am with him in his travail." (Ps 91:15)[28]

R. Yannai's words combine three motifs appearing in R. Meir's two teachings in the context of the law of hanging: (1) the twins; (2) the pain of one is the pain of the other – a motif resembling God's exclamation, *kal'ini*, upon experiencing the agony of the hanging convict; (3) the demarcation between God and humanity is blurred both in R. Yannai's statement and in those of R. Meir.[29]

There is also a critical dimension to R. Meir's parable. In the discussion above, I indicated its ironic aspect: In his zeal to take vengeance on the bandit for having undermined his dominion, the king orders his hanging, but does not realize that in so doing he is also harming himself. This irony is particularly striking in the version of the parable in the Bavli, which describes the instructions given by the king in a similarly urgent tone, but with one seemingly minor difference between it and that of the Tosefta. The Bavli's version reads, "the king commanded and they hanged him . . . the king commanded . . . and he was taken down." This is precisely what happens according to the tannaitic conception of hanging: God's vengeance on the one who cursed his name has a rebound effect, compounding the damage ("so the Name of Heaven is desecrated"). In the parable, the king regains his senses (albeit after the fact); when it comes to the actual halakhah, the Rabbis must protect the king (God!) from Himself, saving Him from the consequences of His actions. The irony implies a criticism of the entire institution of hanging, because the underlying logic compels its absolute abolition. The reduction of hanging to its minimal symbolic expression was not simply the result of finding a balance or compromise between conflicting values. The desire to avoid harming God, who is present in His image (i.e., in man) is of incomparably greater significance, in the tannaitic view, than the desire for stringency in the punishment of the blasphemer or idol worshiper. Had the king known in advance that the bandit is in his image, he would never have ordered his hanging in the first place. The following would be a proper description of the emergence of the rabbinic version of hanging: having conferred an iconic sense to the idea of creation in the divine image, interpreting it as

[27] Compare *Sifra, Behukotai*, 7:4 (371); *b. San* 27b.
[28] *Exodus Rabbah* 2.5, 52.
[29] According to R. Yannai, the blurring is between God and Israel. This is stressed in the continuation of the homily in *Exodus Rabbah*, ibid.

the presence of God in His likeness, the Rabbis realized that this conception was incompatible with hanging as mandated in Deuteronomy 21 and as interpreted in ancient Jewish tradition. But, as absolute abolition of the law of hanging was beyond their interpretive/legislative capacity, they had to suffice with reducing it to a symbolic act. However, in their explanation of the Biblical commandment of hanging, they did not refrain from an implied criticism of the practice of hanging as such. As we shall presently see, a comparable pattern may be discerned in the Rabbis' conceptual and halakhic approach to the modes of execution and capital punishment, which similarly derive from the concept of *zelem*.

Additional support for the reading proposed here may be inferred from a cluster of Talmudic and midrashic sources (primarily tannaitic) touching on various aspects of the idea of humanity's creation in God's image. The conception evoked by these sources, both explicitly and implicitly, is that of *zelem* as presence. Their affinity to the Talmudic passage dealing with hanging is striking. Many of them also betray reciprocal influence and absorption *vis-à-vis* foreign phenomena and ideas – pagan, Christian, Judeo-Christian, and others – all of which undeniably attest to their iconic basis. The following section focuses on the discussion of these Talmudic-midrashic and foreign sources.

II. LIKENESS AND PRESENCE

1. "Diminishes the Image"

The following homily appears at the end of the eighth chapter of *Tosefta Yebamot*:

> R. Akiva says: Whoever sheds blood is regarded as though he had annulled the [Divine] Image, as it says "Whoever sheds the blood of man, by man shall his blood be shed [for in the image of God did He make man]." (Gen 9:6)[30]

This homily is based upon the conception of image as presence. The "image" is the figurative likeness of God, which is itself the configuration of man's form. The iconic relation between the prototype and its image enables R. Akiva to claim that harm done to man, who is created in the *demut* [likeness] of the Divine, is in effect an act of harming God who inheres in His likeness. The act of murder is thus not just the "annulment" of the individual man; it also "annuls the image" – that is, God's presence.

[30] *t. Yeb* 8.7 (p. 28). This homily has a number of parallels (*Genesis Rabbah* 34.6; *b. Yeb* 63b. For the parallels and alternative versions, see the comments of Albeck, *Genesis Rabbah*, idem, n. 2; and in *Tractate Yebamot* (Jerusalem: Makhon *ha-Talmud ha-Yerushalmi ha-Shalem*, 1986), vol. 2: 426–427. The principal difference between the versions lies in the substitution of the word "annuls" (*batel*) by the word "diminishes" (*mema'et*; thus in *Genesis Rabbah* and in *b. Yebamot*), apparently in wake of the text in *Mekhilta de-Rabbi Ishmael, be-hodesh*, 8 ("as though he diminished the image of the king").

A few words on the Hebrew term *demut*. This word carries two meanings. According to the first, it connotes the reflection of one object in any other; that is, that both objects share the same structure or contour. According to the second, the term *demut* connotes the form of an object, and hence may refer to the object itself. When I tell my friend that I saw the *demut* of Reuben, my intention is to say that I saw Reuben himself. On occasion, the midrash employs the term *demut* (likeness) in the sense of image to indicate the object itself. For example in *Avot de-Rabbi Nathan*: "For his sins, man does not perceive what likeness (*demut*) is on high."[31] And in *Pesikta de-Rav Kahana*: "'Wisdom lights up a man's face.' R. Yudan says: Great is the power of the prophets who compare the likeness (*demut*) of the Almighty above to the likeness of man (*le-demut adam*)."[32] Note that this statement does not refer to "what is on high" or "the Almighty," but rather to "the *likeness* above" and "the *likeness* of the Almighty." In these midrashim the word *demut* refers to God Himself, the same meaning it carries in R. Akiva's homily. Yet it is possible that these sources use the term *demut* for reasons of respect and sublimity.

Nevertheless, *demut* in R. Akiva's homily is not just an appellation for God. Rather, the term relates simultaneously to God and to the murdered victim, created in God's image. This combination is possible because R. Akiva's homily is based upon an iconic ontology, which regards the object as present in its image. Something of the prototype's essence is drawn to or "partakes in" another object that was created in its image. According to this conception, the form-based resemblance (isomorphism) between two objects obscures their "otherness." The one (the *zelem*) is conceived as almost an extension of its counterpart (the prototype).[33] The radical nature of R. Akiva's homily is not restricted to applying the "likeness as presence" conception to the God–man relationship, but also, and primarily, to the inevitable result of that relationship – the conclusion that harming man (who is created in the image) *ipso facto* harms God himself.

This metaphysical conception – that is, the affinity between similitude and presence, which I claim underlies R. Akiva's homily – is consistent with a prevalent thought construct found in the ancient world in general, and with the Greco-Roman cultural atmosphere of late antiquity in particular. Although there is a certain amount of ambiguity regarding the status attributed to icons in various belief systems and rituals of that period, ancient sources nonetheless clearly attest to the conception of an object inhering in its likeness and, by extension, of a deity being attracted to and present in its image. In the religious

[31] *Avot de-Rabbi Nathan*, Version A, 1.39 (p. 161).

[32] *Pesikta de-Rav Kahana*, *Parah Adumah*, 4, I:65; see also *Sifre Deuteronomy* 355 (p. 422).

[33] A paragraph from *Exodus Rabbah* 15.17 (p. 182) may refer to the abstract form of the deity being worshipped which is present in the image. Some artisans ask idol worshippers: "Yesterday, you were trampling on this tree in the bath house, and now you are bowing to it?" The idol worshippers reply, "We are not bowing to the tree for the tree's sake, but to the bust of the king engraved therein." See Urbach, "Laws of Idolatry," 143, n. 50.

consciousness reflected in pagan beliefs and practices, not only does the *zelem* resemble the deity, but the isomorphic relationship indicates a real, ontological connection between them (iconism). In the ancient worldview, presence was especially "felt" in the figurative, form-based isomorphism. In their understanding, the iconic aspect of the *zelem* was apprehended primarily on the visual level.

The iconic conception was not limited to folklore, but rather gave rise to quasi-theoretical and quasi-theological reflections. Alongside ancient authors and philosophers who scorned this thought-construct, and especially the beliefs, emotions, and rituals it sustained, there were those who took them seriously and attempted to provide them with a theoretical foundation. This discourse subsequently influenced the popular beliefs, emotions, and rituals that it engendered and sustained.[34] For example, an iconic "metaphysics," in terms of a conception of icon as presence, could conceptually be illuminated by the Platonic notion of "partaking," which explains the ontological continuity between the idea and its reflection in concrete objects. It is common knowledge that the similarity between the idea and the physical object made in its image forms the cornerstone of the Platonic theory of ideas and was discussed *inter alia* in the following dialogue of Parmenides:

"Still, Parmenides," he said, "this much is quite clear to me: these characters (i.e., ideas; *eide*) stand as it were as paradigms (*paradeigmata*) fixed in the nature of things, but the others resemble them and are likenesses (*homoyamata*) of them, and this participation of other things in the characters is nothing other than that they are really an image (*eoikenai*) of them."

"And when two things are alike (*homoion*) must they not partake of the same image?"

"They must."

"And will not that of which the two partake (*metechonta*), and which makes them alike, be the image itself?"[35]

The likeness (*eide*) in this paragraph is a "paradigm" or a "picture" – in other words, a structure or ideal configuration, and not necessarily something fundamentally abstract. The ideal pattern is drawn to its concrete configurations, the latter "partake in it." Plotinus, who viewed himself as the expounder of Plato,[36] relates to the idea of likeness as presence in a more explicit form, and even notes its affinity to the icon-based rituals:

I think, therefore, that the wise men of old, who made temples and statues in the wish that the gods should be present in them, looking to the nature of the All, had in mind that the nature of soul is everywhere easy to attract, but if someone were to construct something sympathetic to it and able to receive a part of it, it would of all things receive the soul most easily. That which is sympathetic to it is what imitates it in some way, like a mirror able to catch [the reflection] of a form. Yes, the nature of the All, made all things skillfully in imitation of the [intelligible] realities of which it had the rational principles.[37]

[34] See Barasch, *Icon*, 42–69, 70–71.

[35] Parmenides, 132 (based on Plato's *Parmenides*, revised edition, Yale 1997, trans. R. E. Allen).

[36] *Enneades* V.1.8 (*Plotinus;* Loeb Classical Library, Plotinus IV – trans. A. H. Armstrong, 39).

[37] *Enneades*, IV 3.11 (p. 71).

According to Plotinus, the soul is the essence of all, and hence attracted to the natural substances formed in its likeness. For "the nature of the All" (i.e., the immutable laws underlying reality) is an act of "imitation."[38] Plotinus writes that, based on this conception, "wise men attracted the gods to their images."[39] In another context, Plotinus notes the causal connection between similar objects despite the distance between them: "For the like parts are not situated next to each other, but are separated by others between, but share their experiences because of their likeness, and it is necessary that something which is done by a part not situated beside it should reach the distant part."[40]

Bearing these reflections in mind, it comes as no surprise that the expression attributed to God by R. Meir (*kal'ini me-roshi* ...) identifies the pain of the hanging corpse with the suffering of God, an identity predicated on the relationship of twinship that binds them, and that R. Yannai identifies an influence or causal connection between the mortal head pains felt by a man and the pains experienced by his twin.

The worship of images was not at the focus of Plato's interests, and certainly did not inspire the development of his theory of ideas. Nevertheless, his words may be interpreted as an attempt to philosophically conceptualize the iconic understanding that prevailed in antiquity. Whereas in Plato's writings this understanding and its bearing upon the worship of images is only alluded to, it receives a clear and explicit expression in the works of the Neoplatonist Plotinus. These doctrines (of Plato and Plotinus) supplied a quasi-theoretical framework for the icon-based rituals of Greco-Roman culture, while also influencing the religious feelings they aroused.

R. Akiva was apparently unaware of the Platonic dialogues, let alone of the writings of Plotinus (who lived decades after him). Nonetheless, I cite them because in my view they illuminate the meaning of the term *demut* as used by R. Akiva. The concepts of *zelem* and presence as articulated by R. Akiva in the above homily and in sources discussed later are best understood against the background of the historical context of which they are an integral part,[41] and from which any attempt to uproot them would be contrived. R. Akiva did not invent a new concept of likeness as presence. Rather, he utilized a concept widely accepted in his historical period and location, especially with respect to icon-related rituals in their various aspects, and applied it to the relationship between God and man.

[38] See *Enneades*, IV 1.1. According to Plotinus, the soul is part of the intellect and of the divine order.

[39] Plotinus' conception is based, *inter alia*, on the metaphysical concept of *sympatheia*. See *Enneades* IV 4.32 (p. 235); Barasch, *Icon*, 76–77.

[40] *Enneades*. See *Enneades* IV.4, 32; Barasch, *Icon*, 68. This view provided the basis for the theurgic conceptions of Porphirus and Ymbalichus, who were among Plotinus's students and successors.

[41] Compare Aptowitzer, "The Temple," Chapter 8, and references; but cf. Baer, *Israel among the Nations*, 13 ff.

All the same, it would be a mistake to ignore the differences between R. Akiva's approach and the Platonic dialogue. According to the former, God is dependent upon His creations. Harming the mundane image is a form of negative theurgy: it "chips away" at the image on high. This is not the case with Plato. The idea, as it exists in the ideal, "upper," abstract "spheres," is indifferent to the fate of its lower replications. In his view, the concrete is by definition ephemeral, and there is not, nor can there be, any theurgic relationship between them. The Platonic idea is "frozen" whereas R. Akiva's "heavenly" image of God is dynamic.

God's presence in man – His image – stands out in R. Akiva's dictum because of the practical-consequential dimension it implies. Accordingly, one cannot understand the image imputed to God purely in terms of religious imagination or awareness. The homily relates to real bloodshed, which has concrete consequences in the Divine realm, a realm not ontologically divorced from the mundane human realm. The language employed in the version of this homily found in *Mekhilta de-Rabbi Ishmael* – "diminishes the image" (*mema'et ba-demut*)[42] – underscores this point. The wording evokes an image of an effulgent heavenly form that is attracted to and "expands" outwards toward its terrestrial manifestations. Harming the latter thereby "diminishes" and carves away at the supernal likeness, which includes its terrestrial "limbs."

The conception that harming man harms God also appears in a Pseudo-Clementine homily studied by Shlomo Pines.[43] According to current scholarly opinion, the Pseudo-Clementine homilies were composed in Palestine during the latter half of the second century, some of them by Jewish-Christians. It is, therefore, not surprising that they occasionally evidence Jewish influence. Pines demonstrates that the seventeenth homily abounds with Talmudic and midrashic motifs and that its origins lie in Judeo-Christian circles.[44] The passage begins with a description of the unique and ineffable splendor of the anthropomorphic form of God, in the contemplation of which the righteous and the pure in heart can rejoice.[45] Immediately after describing the beauty of God, the homily continues:

> For He has stamped man as it were with the greatest seal, with his own Form [*morphe*] in order that he shall rule and be lord of all [*panta*] things, and that all things [*ta panta*] shall serve him. For this reason, he who having judged that He is the "the All" [*to pan*], and man His image [*eikon*] . . .[46] and the man who wishes to worship Him will honor the image, which is man. Therefore one will be requited for whatever [whether good or evil] one does

[42] *Mekhilta de-Rabbi Ishmael, ba-Hodesh*, 8 (p. 233).

[43] Pines, Sefer Yezirah.

[44] Ibid., 97–98. Regarding the Pseudo-Clementine Homilies, see Stone, "Pseudo-Clementines"; see also Danielou, *Jewish Christian Theology*.

[45] Compare *b. Bava Bat.* 58a.

[46] In fact, Pines doubts the authenticity of this sentence. See Pines, *Sefer Yezirah*, 103, n. 261.

to man. For this reason, too, judgment issuing from Him, giving everyone his due, will reach all [men] for he avenges His own Form [*morphe*].[47]

According to this passage "man" – every man – is an image of God, meaning that God is present within him. The requirement of honoring the image (man) is a derivative of the worship of God, and parallels the worship of icons that was prevalent during the author's life. This indicates that he uses the term "image" (*eikon*) in an iconic sense. Moreover, God's presence in His image is the basis for the author's conclusion that any harm to man is equivalent to harming God; consequently, he stresses that "He avenges his own shape."[48] Unquestionably, the verse in Genesis 9:6 is echoed in this passage, which resembles the above-discussed homily of R. Akiva in *Tosefta Yebamot*. Admittedly, the passage in Pseudo-Clementine relates to all offences and not just murder, but we shall presently observe that, according to R. Akiva and other sages, the implications of the idea of creation in the image extend beyond the crime of murder.[49]

The particular context of the passage from Pseudo-Clementine also attests to its iconic conception. Pines demonstrates that the homily deals with a cosmology in which all entities in the cosmos are extensions (*ektaseis*) of the deity.[50] Pines posits this theosophy as the cornerstone of Pseudo-Clementine's interpretation of the idea of man's creation in God's image. This conception of God's attraction to humanity is alluded to in the passage cited above, in the words "He is the All [*to pan*], and man is His image." The conception of God being "All" is the basis of the author's doctrine that all entities are extensions of God. He describes these entities in iconic terms: "He [God] being the Repose and having the Aeon-to-come is His image (*eikona*)." Like R. Akiva, the Pseudo-Clementine homilist describes an act of harming man as "diminishing the image." Considering the similarity in background, time, place, and content between R. Akiva and Pseudo-Clementine, the possibility of a connection between them cannot be dismissed. It may be that the Judeo-Christian homily offers, in its own terminology, a speculative expression of the ideational construct expressed by R. Akiva in his own way, in a well-fashioned and concise homily.[51]

47 *Homilia* XVII 6:2–3. The translation is from Rehm (Berlin, 1953). See also, *Anti-Nicense Christian Library, Translations of the Writings of the Church Fathers*. XVIII, A. Roberts and J. Donaldson (eds) (Edinburgh, 1870), 261–262.

48 The Greek *ekdikei* expresses revenge or punitive action.

49 A similar idea also appears in II Enoch (Slavonic) 13:47.

50 See Pines, Sefer Yezirah, 67 and 73 ff.

51 In another article, Pines shows that the concept of the Divine *kavod* (honor) and angels as extensions of God, which "oscillate" back and forth from God, is attributed to the Jews – apparently to the tannaim! – by Justin Martyr in his *Dialogue with Tryphon*. See Pines, "God, Glory and the Angels."

2. "Five on one tablet and five on the other"

A homily similar to R. Akiva's words in *Tosefta Yebamot* appears in *Mekhilta de-Rabbi Ishmael*:

How were the Ten Commandments arranged? Five on one tablet and five on the other. [On the one tablet] it was written: "I am the Lord your God . . ." and opposite it, [on the other tablet,] was written: "Do not murder." The verse states that anyone who sheds blood as if he diminished the Divine image. This might be compared, by way of parable, to a king of flesh and blood who entered a province and set up icons of himself, made images of himself and struck coins [with his image]. Later on they overturned his icons, broke his images and annulled his coins, thereby diminishing the images of the king. So too, anyone who sheds blood, the verse reckons it to him as though he diminished the Divine image, as it is said: "Whoever sheds the blood of man . . . for in the image of God did He make man." (Gen 9:6)[52]

This homily blurs the categorical barrier between God and man, and in so doing obscures the distinction between "religious" commandments ("mitsvot between man and God": i.e., "the first tablet") and social-ethical commandments ("mitsvot between man and his fellow": i.e., "the second tablet"). The passage applies the concept of likeness as presence to the first commandment in the second tablet, the prohibition of murder, in much the same way that R. Akiva does in *Tosefta Yebamot*. Further on in this homily (which I have not quoted here), this perception forms the basis for the exposition of the other mitsvot in the second tablet (i.e., ethical duties), allowing the author to posit that these duties are in effect duties owed to God, in as much as "in the image of God did He make man."[53]

The homilist in the *Mekhilta* (R. Hanina b. Gamliel) was apparently aware of the elusive nature of the conception of likeness as presence and, like R. Meir in the context of hanging, invoked a parable to elucidate it. The parable is based on the imperial cult, the worship of statues of the Roman emperors.[54] The religious and political dimensions of this ritual are completely fused, as many Roman emperors were deified,[55] some posthumously, and some even during their lives. Moreover, according to the iconic conception, the deity, in this case the Roman emperor, dwells in the statues made to honor him. Historians are divided

52 *Mekhilta de-Rabbi Ishmael, ba-Hodesh* 8 (p. 262).

53 In this context, I will mention Rashi's comment: concerning Hillel's famous teaching (*b. Shab* 31a: "What is hateful to you, do not do to your fellow man. This is the entire Torah, all the rest is commentary"): "'Do not desert your friend and your father's friend' (Prov 27:10), this is the Holy One blessed be He. Do not transgress his words, for you find it hateful that your friend transgresses your words" (Rashi *ad loc.*, *s.v. "de-'alekha."*).

54 See Smith, "The Image of God," 479.

55 There is extensive literature on the cult of emperor worship and its various aspects. The most fundamental study was that of Taylor, *Divinity of the Roman Emperor;* see also Bickerman, "The Emperor's Cult"; Price, *The Imperial Cult*, esp. Chapter 7; Fishwick, *Imperial Cult;* Zanker, *The Power of Images*.

regarding the degree to which people actually believed in the divinity of their emperors, although there may have been differences between the population in Rome itself and that of the provinces, and between both of these and the intellectual elite and the emperor himself. For our purposes this question is secondary, because the relevance of the homily in the *Mekhilta* and others similar to it lies, not in the divinity of the emperor, but rather in the religious dimension of the emperor-worship and, primarily, in the belief that he dwells in his statues. Indeed, the religious nature of the imperial cult and its images is not disputed.[56] The *Mekhilta* alludes to the aspect of presence by describing damage to the king's portraits, not only as symbolically undermining his sovereignty, but as diminishing the likeness of the king himself. It reflects the extant Roman law which equated damaging or acting in disrespect to the portrait of an emperor with treason, punishable by death.[57] This legislation was renewed in the second century CE, concurrently with the augmentation of the imperial cult and the emphasis on its religious dimensions.[58] Even though the parable does not relate to the divinity of "the king" (for obvious reasons), the religious character of the worship of his images (even if at times this was only a facade) is certainly in the background, and strengthens the iconic reading of this homily. After all, the concept of image as presence is a substantive aspect of all the image-cults of antiquity, both of the emperor and of other deities.[59] It is therefore no wonder that this parable figures in the *Mekhilta*'s homily so as to emphasize the claim that harming a human being diminishes the divine image.

The parable of the emperor's portrait on his coins was also used by Athanasius, (298–373 CE) in order to explain the conception of image as presence. Athanasius served as bishop in Alexandria, and figured prominently in the polemics against Arius (250–336 CE).[60] Contrary to the decision adopted in the Council of Nicea (325 CE), Arius claimed the superiority of the father over the son, a belief which undermined the divinity of Jesus, insofar as it described him as a secondary being. In a passage from *Oratorio Contra Arianos* III, Athanasius explains a number of verses from the New Testament concerning the notion that Jesus is merged with God.[61] John 10:38 states (14:10–11), "That you may know and believe that the Father is in me, and I in the Father." Further on the Gospel

[56] Regarding the religious dimension of the imperial cult, see Millar, "The Imperial Cult"; Bickerman, "The Emperor's Cult"; and esp. Price, *The Imperial Cult*. Price stresses that the placement of the emperor's statues in the cities of Asia Minor (and at other sites around the Empire) was a local initiative based on religious motives, and not coerced by the emperor or his representatives. See Urbach, "Laws of Idolatry"," 157; and see below.

[57] Price, *The Imperial Cult*, 195, cites an example from Asia Minor where a man who urinated on a statue was executed.

[58] See Garnsey, "Harshened Penal Laws," 145–146.

[59] See *supra*, Chapter 2.III; Lane-Fox, *Pagans and Christians*, 135.

[60] See, "Athanasius," *ER*, 1: 478–479; regarding Arius, see "Arianism," *ER*, 1: 405–406; "Arius," 412–413.

[61] Athanasius emphasizes in his writings that the relationship of "presence" exists not only between God and Jesus, but also between Jesus and the Church in its entirety (Corpus Christi). See John

continues "Do you not believe that I am in the Father, and the Father in me? The words that I speak to you, I speak not of myself. But the Father who abides in me, he does the works. Believe you not that I am in the Father, and the Father in me?" Concerning these statements Athanasius writes the following:

> And this can be more easily understood by a comparison with the portrait (*eikon*) of the king [on a coin], because the portrait possesses the form [*eidos*] and the likeness (*morphe*) of the king, and the king himself possesses the form of image (*en tei eikoni eidos*). The similitude between the [portrait] of the king and his portrait [on the coin] is so precise that the person who sees the king again will be certain that it appears in the portrait. Because of the exact resemblance between them, the portrait on the coin says to he who wishes [thereafter] to see the king, "The king and I are one, I am in him and he is in me; what you see in me you will see in him, and what you seem in him, this is what you will see in me.[62]

Athanasius stresses that the precise figurative similarity between the source and its replica attests to their connection, based on the concept of presence. When observing the figure embellished on the coin, one actually sees the king himself, because the king and his portrait are one and the same: "I am in him and he is in me." According to Athanasius, the merger is even clearer when the copy is a living image. The emperor's portrait on coins serves to disseminate the emperor's propaganda.[63] Of course, we cannot posit any direct connection between the *Mekhilta* midrash and the writing of Athanasius, but the context makes it clear that the coin motif, common to both sources, was a well-known and popular parable.[64]

The notion that divinity abides in Jesus by reason of him being made in the image of God has been the bedrock of Christian tradition since the first century, particularly in the Pauline epistles.[65] Scholars have recently noted this doctrine's relation to the doctrine of creation in the Divine image in the Jewish tradition, especially as interpreted in rabbinic sources.[66] Conceivably, Athanasius' explanation of this parable, being consistent with the general atmosphere of early Christian writings, is also applicable to midrashic sources.

3. Body Worship – "For the sake of Heaven"

Reference to the worship of royal statues to express the iconic connection between man and his creator is ascribed in midrashic sources to Hillel the Elder. In *Avot de-Rabbi Nathan* the following story appears:

14:26; Romans 8.28–30. In his view, the iconic relation between God, Jesus, and the Church is a necessary condition of the believer's salvation from sin and death.

[62] *Oratio Contra Arianus* III.m c.5 PGr XXVI, 332a.

[63] See Price, *The Imperial Cult*, 173–174, 180.

[64] Gager, "Body-Symbols," 356.

[65] See 2 Cor 3:18; Eph 4:23; Phil 2:5; Rom 8:28; Col 1:15; Heb 1:3 (which admittedly are not regarded as authentic Pauline epistles, but nevertheless express a similar view). And see Altmann, "Imago Dei," 19.

[66] Jewett*, Anthropological Terms*, 240–245; Segal, *Paul*, 56–71.

"And let all of your deeds be for the sake of Heaven."[67] Like Hillel. When Hillel would go somewhere, they would ask him, "Rabbi, where are you going?" [He would answer]: "I am going to perform a mitzvah." "Which mitzvah, Hillel?" "I am going to the toilet." [They asked him], "Is this a mitzvah?" He replied: "Yes, so that the body not be impaired."

[On another occasion they would ask him:] "Where are you going, Hillel?" [He would answer]: "I am going to perform a mitzvah." "Which mitzvah, Hillel?" "I am going to the bathhouse." [They asked him:] "Is that a mitzvah?" He replied: "Yes, so in order to cleanse the body. Know that this is so, for in the case of the statues (Ειξοϖτοϖ) that stand in the royal plaza, the officer appointed to cleanse and polish them is given an annual state salary, and furthermore is raised to the status of the nobility of the kingdom. How much more so we, who have been created in the Divine image and likeness, as it says, "For in the image of God did He make man!" (Gen 9:6)

Shammai would not say it this way, rather [he would say]: "Let us fulfill our obligations from this body."[68]

Hillel undoubtedly refers here to the worship of statues prevalent in the Roman Empire of his time. Augustus (30 BCE–4 CE) referred to himself as "the son of god" (*divi filius*), a title that also appears on his coins. He was the founder of the imperial cult and imposed it primarily on the eastern provinces of the Empire.[69] Hillel flourished during the reign of Herod, Augustus' protégé, who spread the imperial cult in Palestine.[70] Hillel's comments reflect a political reality in which there was no distinction between the political aim of setting up the emperor's statues and the fact that he was the subject of a cult and even of religious sentiment. For obvious reasons, Hillel mentions the "statues that stand in the royal plaza" (or "in the theatres and circuses"), for these were the statues with which he would have been familiar. However, scholars have convincingly demonstrated that there was no distinction between the symbols of the emperors set up in public places, and to whom homage (*agalma*) was paid, and the idols placed in the temples for ritualistic purposes (*eikon*).[71] In this story of Hillel, as in the *Mekhilta* excerpt discussed earlier, the religious dimension of the imperial cult substantiates the iconic reading of the text. As such, it fortifies the argument for a similar reading of the idea of creation in God's image as depicted in these midrashic sources.

[67] See *m. Avot* 2.12.

[68] *Avot de-Rabbi Nathan*, Version B, 30 (179). Kister notes that in all manuscripts Shammai's words are "Let us fulfill our obligations from (*min*) this body" and not as they appear in the printed version. "with (*'im*) this body." See Kister, *Avot de-Rabbi Nathan*, 4, n. 4. For a slightly different version of a similar story, see *Lev Rabbah* 34.3.

[69] Regarding the worship of Augustus as the son of God, see Taylor, *Divinity of the Roman Emperor*, 177; Galinsky, *Culture*, 90–128; Fishwick, *Imperial Cult*; Zanker, *The Power of Images*. The imperial cult in the Eastern part of the Empire is also dealt with by Price, *The Imperial Cult*.

[70] Stern, "Herod," 240–241.

[71] Price, *The Imperial Cult*, 178–179. R. Meir may be echoing this idea in *m. Avodah Zarah*. 3.1.

The example of the statues of the emperors does not require the homilist to admit to their divinity. The only implication is that the emperors, during their lives or posthumously, are present in their images.[72] This conception is reflected in the statement that, not only did the officer receive a handsome salary (*salera*, *salarium*), but that he was "raised to the status of the nobility of the kingdom." In other words, his aggrandizement stemmed from his occupation, his tending to the images on a daily basis. Indeed, according to a version of the story found in *Leviticus Rabbah*, the officer cleans and polishes the statues "that stand in the theaters and circuses," and not in the temples.[73] Needless to say, the officer had no direct dealing with the monarchs themselves, but even so, "he was raised to the status of nobility of the kingdom."

"Bodily needs," generally conceived as prime examples of activities performed strictly for oneself, are described by Hillel as "worship of God." To focus this idea more sharply, he expresses himself in a manner that "separates" himself from his body, referring to the latter as an independent entity, which becomes the subject of a religious ritual: "so that the body not be impaired . . . to cleanse the body." This "separation" is even clearer in the example of the officer who exists independently of the statues for which he is responsible and by virtue of which his status is enhanced. Hillel's words do not imply a dualistic anthropology, which differentiates between the body and soul, and locates man in the soul. Rather, he employs a literary device to underscore his belief in the body's "divinity" – namely, a device emphasizing that the person, in the concrete, bodily sense, is an image of God.

Hillel views his body as an image of God; as such, tending to its needs is a form of divine service, a commandment (*mitzvah*). The maintenance and cleansing of the human body in the lavatory and bathhouse, respectively, do not constitute commandments in the formal sense, but the Divine presence in his image vests these and similar acts with the status of obligations performed "between man and God." This is further attested by the statement from *Mishnah Avot*, the text which the story comes to illustrate: "And let all your deeds be for the sake of Heaven." In Hillel's view, the words "for the sake of Heaven," do not have a deontological connotation, as the expression "for the sake of the commandment" is often interpreted.[74] Rather, their meaning is entirely literal: for the sake of God.[75] The veracity of this reading is born out by a statement in *Bavli Shabbat* (50b): "One must wash his face, hands, and feet daily for his Maker, as it is said, 'The Lord has made every thing for His

[72] Compare Lieberman, *Hellenism*, 126–127.

[73] *Lev Rabbah* 34.3 (p. 766). It seems that both versions reflect a similar perception, and that the different wordings were created during the transmission process.

[74] According to Urbach, *The Sages*, 340; see Knohl, "Kingdom of Heaven," 24.

[75] In the parallel in *Lev Rabbah* 34.3 (p. 766), the story is cited in slightly different wording to explain Prov 11:17: " 'The merciful man rewards his own soul' – this is Hillel the Elder," etc. The midrash means that a person who takes care of his body rewards his Maker, interpreting the word *nafsho* as referring to his own body. On *nefesh* as meaning "body," see Licht, "Soul", 898–899.

purpose' (Prov 16:4)." Understanding the words "for his Maker" (*bishvil kono*) as a deontological imperative by adding the words "for the sake of the commandment" is contrived, especially in view of the proof text, "The Lord has made every thing for his purpose." The expression "his Maker" (*kono*) evokes the idea of making or creation, in the sense of "Creator of heaven and earth" (*koneh shamyim va-aretz*) (Gen 14:19, 22).[76] In its Biblical context, the ambiguous term "for his purpose" (*lema'anehu*) appears to refer to the righteous man, for whom God has created everything. But the homilist interprets it as referring to God Himself, as if to say: God made everything for His own sake.[77] The implication is that man was created in God's image, and that God made him in His image for Himself. The presence of God in the human being thus bestows human beings with a divine aspect, and caring for the body becomes an act "for the sake of Heaven" (i.e., "for his "Maker").

In *Tosefta Berakhot* the formulation of this "Hillelite" tradition is more sweeping and audacious. "A person should not tend to his face, his hands and legs for anything other than the glory of his Maker; as it says, 'The Lord has made everything for his [own] sake.' "[78] Any tending to the body, created in the *zelem*, must be "for the sake of Heaven!" Just as did *Avot de-Rabbi Nathan*, so too the Tosefta effectively distances a person (in contemporary parlance "the subject") from his body: "A person shall not tend to his face, hands, and legs . . . ." Here, too, the view expressed is not dualistic. Arguably, this formulation endorses the "objectification" of the human being. The wording "shall not tend to" (*lo yishtamesh adam*) relates both to actions predicated of the body (washing, eating, etc.) and other actions, all intended for earthly purposes. Any bodily action normally regarded as benefiting a person must be done for the benefit of God, "for the sake of his Maker." The import of this requirement is clarified by reading it in conjunction with Hillel's statement regarding *zelem* and *demut*. More than relating to the ways in which a person can use his body, it relates to the consciousness informing such activities. This consciousness is rooted in the recognition that the body – that is, the human being – is an image of God, and tending to the body is *ipso facto* beneficial to God, who is drawn to His image. This awareness distinguishes between the person who tends his body for himself, and one whose pleasure is "for the glory of his Maker."

"Shammai would not say it this way; rather [he would say]: 'Let us fulfill our obligations with this body.'" In Shammai's view, washing the body, and attending its needs do not constitute a mitzvah, because the body itself is not an image of God. Shammai's perfunctory formulation does not explain how, if at all,

[76] See also Deut 32:6, Ps 139:13.

[77] The word "for his own sake" (*le-ma'ano*) admits of this interpretation, but it would seem that its literal meaning is as explained by Ibn Ezra, commenting on Prov 16:3: "for the Lord has made all things for the pure person." For a similar interpretation, see *Mekhilta de-Rashbi*, 23.29, p. 230.

[78] *t. Ber* 4.1 (Lieberman p. 18). See also Lieberman, *Tosefta Kipeshuta, Zeraim*, 56.

Shammai understood the Biblical conception of man's creation in the image of God, but his opposition to Hillel's radical ideas is evident. In his view, the body is not the divine sanctuary; consequently, it cannot be an object of religious duties. To the contrary: Shammai takes a negative attitude toward "this body" (*ha-guf hazeh*). Israel Knohl has demonstrated that, according to Shammai, the bodily dimension, that is, human existence as such (because Shammai too is not necessarily a dualist), is ignoble. Accordingly, "Beit Shammai states: It would have been better for man not to have been created than to have been created."[79]

The accepted interpretations of Shammai's statement in *Avot de-Rabbi Nathan* relies upon Schechter's version, which reads *'im ha-guf* ("with this body"). However, Menachem Kister has demonstrated that all manuscripts read *min ha-guf* ("from the body"). This reading further sharpens the tension between the two views: Hillel's conception of the body (and of man) as the image of God makes the body an object for the fulfillment of mitsvot. Shammai rejects the conception that the body (and, apparently, man as well) is an image of God; religious duties are not performed *to* the body but *from* the body to Heaven![80] The body, "having been created," is nothing but a tool for the performance of mitsvot. The interpretation proposed here is further substantiated by a baraita from *Bavli Beitsah* relating to this dispute:

> It was taught: They said of Shammai the Elder that all his days he used to eat in honor of the Sabbath. If he found a fine animal, he would say: This is for the Sabbath. If he found another that was still better, he would set aside the second [for the Sabbath] and eat the first. But Hillel the Elder had another attitude, for all his deeds were for the sake of Heaven, as is said "Blessed be the Lord every day." (Ps 68:20)[81]

A cautious comparison between the respective "attitudes" indicates that the words "for the sake of Heaven" (*le-shem shamayim*) cannot be given the meaning of "for the purpose of fulfilling a commandment." On the contrary, both the contents and the formulation of the baraita indicate that these two concepts are contradictory. The respective attitudes of Shammai and Hillel receive expression in identical circumstances: the finding of a fine animal on a week day. Shammai abstains from eating it because "All his days he used to eat in honor of the Sabbath." Any act of eating during the week was infused by his awareness of the honor of the Sabbath, because it invariably involved foregoing a better portion, which would be set aside for the Sabbath. Hillel, on the other hand, would consume it immediately "for all his works were for the sake of Heaven." Both these approaches exceed the formal duties prescribed by the halakhah, but paradoxically (and this is equally true of the homily appearing in *Avot de-Rabbi Natan*), only in connection with Hillel's statement is "for the sake of Heaven" mentioned. If these words are interpreted "for the purpose of fulfilling a

[79] *b. Eruv* 13b; see Knohl, "Kingdom of Heaven," 25–34.
[80] See Kister, *Avot de-Rabbi Nathan*, 124 n. 38.
[81] *b. Beitsah* 16a.

commandment" then we would need to ask why Shammai's actions are only considered as "in honor of the Sabbath." They too should merit the appellation of "for the sake of Heaven."

Hillel's actions done for "for the sake of Heaven" should thus be interpreted with the same literal meaning as attributed to his statements in *Avot de-Rabbi Nathan* – namely, for the sake of God. In other words, man's body is an "image" of God; accordingly, its sustenance, cleanliness, and maintenance are acts which are "for the sake of Heaven." This conclusion likewise emerges from Hillel's interpretation of the Biblical verse invoked in support of his view. In its scriptural context, the words "blessed be the Lord day by day" express the Psalmist's gratitude to God, "[who] supports us, God, our deliverance" (Ps 68:20). Hillel however, reverses their meaning: He provides the word "blessed" (*barukh*) with a precise, literal meaning that connotes the continuous bounty that man showers upon God by caring for God's *zelem*, the human body, "day by day."

This interpretation is confirmed by another Hillelite source in *Bavli Ta'anit*: "R. Eliezer said: A person should always measure himself as if the Holy One is in his stomach, as is said, 'The Holy One in your midst (*be-kirbekha kadosh*); I will not come in fury' (Hos 11:9)."[82] R. Eliezer's comments refer to a person who abstains from eating, and in so doing engages in self-abnegation, effectively "diminishing" his own physical dimensions. Later in the same passage, R. Shimon ben Lakish states: "He is called righteous [he who does not afflict himself and eats], as it says. 'The merciful man rewards himself; but one sullies his own flesh is cruel' (Prov 11:17)." Notably, this verse was expounded in a similar manner in a homily ascribed to Hillel in *Leviticus Rabbah*, and is the same tradition as ascribed to him in the passage in *Avot de-Rabbi Natan* discussed earlier.[83]

Shammai's approach was different: it derives from a love of the commandments and the concomitant duty to fulfill them. Shammai did not regard the body as an image of God, and its sustenance and maintenance are unrelated to the Divine. It is precisely for this reason that their respective approaches are presented as antithetical. Shammai's view, to eat all of his meals "in honor of the Sabbath," receives concrete expression in his abstention from bodily gratification during the week and, as such, implies criticism of Hillel. It also sets Hillel's notion of "for the sake of Heaven" in sharper relief, including its foundational conception of the body as an image of God.

4. "If I am here, All (*hakol*) is here"

Hillel's understanding of the Divine presence in humanity also follows from a number of maxims in which God, as it were, speaks from his throat. David

[82] *b. Ta'an.* 11a–b.

[83] See *Lev, Rabbah* 34.3 (p. 766).

Flusser[84] dealt with these sayings, connecting them to Hillel's conception of creation in the image:

And it was taught: They said of Hillel the Elder that when he was at the *Simhat Beit ha-Sho'evah* [celebration of drawing water for the Temple, during the festival of Sukkot],[85] he would say: "If I am here *all* is here; and if I am not here, who is here?"

He would say: To the place that my heart loves, there my feet lead me. If You will come in my house, I will come in Your house; but if You will not come in my house, I will not come in Your house. As it says: "In every place where I cause My name to be mentioned, I will come to you and bless you." (Exod 20:21)[86]

Thus would Hillel say: My humiliation is my elevation, my elevation is my humiliation. What is the reason for this? [for it says: "Who is like the LORD our God] who, enthroned on high, sees what is below [in heaven and on earth]." (Ps 113:5–6)

Combining ethical-existential and theological elements,[87] these statements are enigmatic, apparently intentionally. But even without fully fathoming their meaning, they illuminate Hillel's conception of *zelem*, which may in turn assist in explaining them. The first statement, made in the Temple during the *Simhat Beit ha-Sho'evah*, when an acute and powerful sense of the Divine presence was experienced by the celebrants, is striking in its audacity.[88] Hillel's statement is not just an expression of supreme self-worth, as Flusser claims, but may even allude to self-deification, since "I" (*ani*) is equated with the All (*hakol*), which in ancient Jewish and Christian literature refers to God.[89] In the second statement, Hillel expresses his feelings regarding the dynamics of his relations with others. Yet despite the social-mundane atmosphere of this dictum, it is suddenly thrust into the metaphysical realm when supported by a verse spoken by God himself at the Sinaitic revelation! The third statement opens with a paradox concerning the relationship between humility and dignity.[90] Here, too, the verse is supported by a verse.

Certain scholars argue that the speaker in the second statement is God.[91] This interpretation severs it from Hillel's other statements, which do not admit of a non-personal interpretation. Moreover, it isolates that statement from Hillel's general conception of humanity as the image of God. These considerations induced Flusser to claim that in the second statement too Hillel was referring

84 Flusser, "Hillel."

85 Usually translated as "The House of Water Drawing." See *m. Suk* 5.

86 *b. Suk*, 53a. *Avot de-Rabbi Nathan*, Version A, 27, p. 55, reads: "To the place that my heart goes . . . ." See also ibid., Version B, 27, p. 55; and see Kister, *Avot de-Rabbi Nathan*, 193, nn. 377–388; and see *y. Suk* 5.4 (58b); *t. Suk* 4.3 (p. 198); *Mekhilta de-Rabbi Ishmael, ba-Hodesh*, 11.

87 See Flusser, "Hillel," 202.

88 *Lev Rabbah* 1.1 (p. 17); and cf., esp., *m. Suk* 5.1–4; and *y. Suk* 5.1 (55a).

89 For a detailed discussion, see Lorberbaum, *Zelem*, 315 n. 126.

90 See Flusser, "Hillel." The humility of Hillel is referred to in numerous sources. See, e.g., *Shab*. 30b, 31a.

91 Lieberman, *Tosefta Kipeshuta*, *Mo'ed* (*Sukkah*) ibid.

to himself.[92] Flusser connects Hillel's statements here to his general conception of *zelem*, but does not discern in them the dimension of presence; accordingly, he interprets them as metaphors expressing an elevated sense of self-worth. In my view, Flusser's interpretation is overly "humanistic." Statements of this genre, their wording, and the verses cited in their support, indicate that Hillel ascribed to himself a quasi-divine status. This impression is consistent with the iconic reading of Hillel's conception of *zelem*. Having accepted the notion that man's creation in God's image indicates God's presence in humanity, it may reasonably be argued that God and Hillel could speak together as a single entity.[93] Hillel's statements blur the distinction between the personal and the general, the lowly and the sublime, the mundane and the exalted and, ultimately, between the human and the divine. In so doing, he expresses the conception, or more precisely his personal sense, of the divinity inhering within him. In this context, it is important to note, as was pointed out by Flusser, that Hillel does not attribute this elevated status to himself alone. Its application is universal, to all human beings, for God inheres in all those whom He created in His image.[94]

5. "One who enters the toilet should say: 'Give honor to the God of Israel'"

We noted earlier that Hillel described going to the toilet as an act of maintaining God's image. This approach to performing one's bodily needs may also shed light on the following halakhah:

> One who enters the toilet should say: "Be honored, you honored and holy ones that minister to the Most High. Give honor to the God of Israel. Leave me alone until I enter, do my needs, and return to you."[95]

According to this baraita, before a person enters a toilet he should address the angels ("You honored and holy ones that minister to the Most High") who are his permanent entourage, requesting that they refrain from escorting him into an unclean place.[96] Our concern here is with the words "Give honor (*tenu kavod*) to the God of Israel (*le'elohey yisrael*)." Who is "the God of Israel" to whom the

[92] Flusser, "Hillel," 35; similarly, see Bacher, *The Aggadah of the Tannaim*, 6–7. Flusser connects Hillel's words to statements attributed to Jesus in the New Testament (Luke 1:20–23; Matt 12:28–30) and surmises that the latter was influenced by Hillel. See also John 4:37–39.

[93] Regarding the Akivan notion of God speaking from the throat of a man in prayer, see Naeh, "Fruit of the Lips," esp. at 260.

[94] Flusser, "Hillel" (p. 33), claims that Jesus, as opposed to Hillel, attributed an elevated status exclusively to himself.

[95] *b. Ber* 60b.

[96] The notion of angels constantly accompanying man is common in midrashic literature. See, e.g., *Genesis Rabbah* 68. 2 (ed. Buber 788–789); *Midrash Tehillim* 17.5 (130–131), which will be discussed later. The theme also appears in apocryphal and sectarian compositions; see Urbach, *The Sages*, 159.

angels are being asked to bestow honor? It seems unlikely that the intention is to God alone, for the glory of God is not, on the face of it, connected to man's tending to his bodily needs. A more plausible explanation is that in these words the speaker refers to himself, in the third person. This reading is congruent with the language by which the angels are addressed, as "honored and holy ones," who for their part are requested to honor the human being and to wait for him until he relieves himself. In Talmudic parlance, the term "honor" is occasionally used as a euphemism for the act of performing one's needs. For example, a Mishnah in *Tamid* relates that underneath the Temple there was "a toilet of honor (*beit kiseh shelkavod*). And this was its 'dignity': If he found it locked he knows there was someone there."[97] In the circumstances described in this Mishnah, "dignity" connotes a person seeking privacy for the purposes of honoring, and cleaning his body (i.e., his dignity).[98] A somewhat different version of the blessing recited upon entering a toilet is found in *Yerushalmi Berakhot*. There, too, the person's honor is identified with the honor of God:

> One who enters a toilet recites two blessings: one when he enters and one when he departs. Upon his entry what does he say? "Honor to you, O honored ones, who minister the Holy [One]. This is the way of the earth (*derekh eretz hu*), clear the way, blessed be the honored God."[99]

In this version of the blessing, too, the term "blessed be the honored God" (*barukh ha-el ha-kavod*) refers to the person, and here too the speaker ascribes to himself "divine honor."

In the story from *Avot de-Rabbi Natan* discussed above, Hillel refers to his going to the toilet as a mitzvah, as the body was created in the image of God. An iconic understanding of *zelem* may explain the phrase "God of Israel" utilized in the blessing for the toilet, because the cleaning of the *zelem* is equivalent to the cleansing of God, who inheres in His image. The relationship between humanity as *zelem* of God and his accompanying angels also appears in the following passage from *Midrash Tehillim:*

> R. Joshua b. Levi said: When a man walks on the highway, an *ikonia* of angels goes before him, proclaiming: "Make way for the *ikonia* of the Holy One, blessed be He." And it also says, "For He will order His angels to guard you wherever you go." (Ps 91:11)[100]

Obviously, the "*ikonia* of the Holy One blessed be He" is the icon of God. As demonstrated by Daniel Sperber, "the *ikonia* of the angels" refers to a legion of angels that treats the human being made in God's image in the same manner as

[97] *m. Tam* 1:1; cf. *m. Pes* 7.8.

[98] On the equation honor = body in biblical sources, see Weinfeld, "God the Creator," 117. In Weinfeld's view, the word "honor" (*kavod)* is the etymological derivative of the word *koved*, heaviness, which is connected to a concrete body.

[99] *y. Ber* 9:4 (14b), according to MS. Leiden.

[100] *Midrash Tehillim* 17:8 (Buber, p. 131).

would a military unit marching in front of a king, protecting him and announcing his arrival.[101]

In a manner reminiscent of the sources discussed above, the words "the God of Israel" (or "honored God", in Yerushalmi's version) in the words recited upon entering the toilet, eliminates the distinction between God and man, indicating their ontological identity. This formula thus gives a liturgical expression to the Hillelite understanding of *zelem*. As we shall see below, this notion received similar expression in other liturgical contexts.

6. "I have acquired a male child with the Lord": *Zelem* and the *Shekhinah*

Shekhinah is the term most frequently used in Talmudic literature for God's presence in the world. As scholars have noted, in most of its appearances it does not connote a separate entity – an angel, emanation, or "created glory" (*kavod nivra'*) – but rather God Himself.[102] Shekhinah is therefore a cognate Talmudic term for what I refer to in this book as an extension of God. The connection between the *zelem* concept in its iconic sense and the presence of the Shekhinah finds expression in the following midrash:

"[And she said: I have acquired (*kaniti*) a male child (*ish*)] with (*et*) the Lord" (Gen 4:1). R. Ishmael asked R. Akiva: Since you have served Nahum of Gimzo for twenty-two years, [who taught], that [the words] *akh* and *rak* are [to be interpreted] as exclusionary, and *et* and *gam* as inclusionary, what do you do with the *et* written here? He [Akiva] replied: If it said, "I have acquired a male child, the Lord" it would have been difficult . . . But "*et* the Lord" [teaches] that in the past Adam was created from the ground, and Eve from Adam; but henceforth it shall be, "In our image, after our likeness" (Gen 1:26): neither man without woman nor woman without man, nor both of them without the Shekhinah.[103]

The enigmatic language of "I have acquired a male child with God" (*kaniti ish et YHWH)* is Eve's response to the birth of her first child, explaining her decision to call him Cain (based on the Hebrew *kaniti*).[104] The homilist explains Eve's words by using the idea of creation in God's image. Scholars have disputed the identity of the homilist, because it is unclear whether the speaker is R. Akiva or R. Ishmael. Although the speaker at the end is R. Ishmael, it seems more likely that R. Akiva is the actual author of this homily.[105]

R. Akiva interprets the verse "I have acquired a male child with the Lord" by means of another verse: "Let us make man in our image, after our likeness" (Gen 1:26). The use of the plural form ("Let us make") is surprising, forcing the

101 See Sperber, *Essays*, 96–108 and ibid. parallel texts and additional sources.
102 Urbach, *The Sages*, 40 ff; Scholem, *Basic Concepts*, 148.
103 *Genesis Rabbah* 22.2 (p. 181).
104 Von Rad, *Genesis*, 100.
105 Kahana (Critical Edition, pp. 320–321) argues that this homily should be attributed to R. Ishmael; but see Lorberbaum, *Zelem*, 321, n. 144.

Biblical interpreter to ask who was God's "partner" in man's creation, and in whose likeness, apart from that of God ("our likeness"), man was created. R. Akiva resolves these questions by reading the verse as referring to the "first born child" as opposed to the first man. As distinct from Adam, who was created by God from "the dust of the earth," and from Eve, who was constructed from one of Adam's ribs, the child to be born was the product of their three-way cooperation; hence, "Let us make." Furthermore, according to this homily, the word "I have acquired" (*kaniti*) is understood as an expression of creation and making, in the sense of "Maker (*koneh)* of heaven and earth" (Gen 14:19, 22) or, in the tannaitic phrase, "in honor of his Maker (*kono*)."[106]

In this connection I will note that the Sages were perturbed by the plural form "We shall make [...] in our image after our likeness," and devoted extensive efforts to its exegesis. An example of such an effort is implied in the homily of R. Akiva and R. Ishmael cited above from *Genesis Rabbah*.[107] By contrast, the terms "image (*zelem*) of God" and "likeness" (*demut*), when predicated of God, were not found to be problematic. As we observed above (and as we shall presently see), they did not hesitate to give this phrase (apparently according to the literal meaning of the text) a figurative-iconic interpretation. The translators, however, adopted a different path, the majority of them hesitating precisely over the second question (i.e., the issue of *zelem* and *demut* of God), whereas the plural form was generally translated in its literal sense.[108]

R. Akiva's exegesis is intended to emphasize that not only were Adam and Eve created by God in His image, but so was their son, so that "henceforth it shall be, 'In our image, after our likeness.' "[109] Humanity's essence as an image of God is not a one-time occurrence, because the reproductive mechanism ensures the replication of the Divine image in every newborn child.[110] The divine likeness of the child, bestowed upon him at birth, assures that he is not "without the Shekhinah." This homily is based upon the exegetical methodology ascribed to Nahum Ish Gamzu, whereby the word *et* in the Torah means "also" or "to include." The verse is thus explained as follows: "I have created a child as well as (*et*) God." The God who is "included" is not a separate entity

106 See *supra* section II.3, and Kahana, "Critical Edition," 221.

107 See primarily *Gen.* 8.3–8 (pp. 58–62); Kister, "Let Us Make Man," 42–49.

108 Kister dealt with this distinction, ibid., 38; see ibid. for different interpretations of this phrase in Talmudic and in ancient literature.

109 The words "In the past, Adam was created from the ground" do not mean that the Adam was not created in the Divine image (see R. Akiva, *m. Avot* 3.14 "Beloved is man for he was created in the Image"). Rather, their aim is to sharpen the distinction between the manner of his creation – by God, from the earth, and in His image – and the manner in which his progeny was created – from man, woman, and the Shekhinah.

110 In some midrashim the *zelem* is limited to the first three generations (Adam, Enosh, and Seth); see *Genesis Rabbah* 23:26 (p. 227). In my view, this midrashic theme is a later one, and marginal compared to the dominant theme discussed above. Compare Goshen-Gottstein, "The Body as Image."

from the child. The idea of *zelem* means that God is present in the child, He is drawn to him. When Eve proclaims "I have created a child *et* God" she, according to the homilist, is stating that God inheres in the child to whom she has just given birth. The newborn child is identified with the Shekhinah because, like his parents, he too is created in the likeness of God. This homily is interesting because of the manner in which it presents the conception of *zelem* as presence: it explains that the Shekhinah inheres in human beings by reason of their essence as God's images.

7. "And he called Jacob God"

An instructive example of the iconic sense ascribed by Talmudic literature to the concepts of image and likeness is the myth of Jacob's divinity. Though some scholars have dealt with this myth, this particular aspect has remained somewhat obscure.[111] The following midrash interprets the verse describing Jacob's dream: "And angels of God were ascending and descending on it" (Gen 28:12):

> R Hiyya and R. Yannai [disagreed]: One said: "ascending and descending" on the ladder; while the other said: "ascending and descending" on Jacob . . . as it says, "'Israel in whom I glory" (Isa 49:3); you are the one whose image [*eikonin*] is engraved on high. They would ascend and see his image, and they would descend and see him sleeping. [This may be compared] to a king who sat and judged in a judgment chamber; people ascend the basilica and find him sleeping, they would go down to the judgment chamber and find him judging.[112]

This text is replete with errors, such that its difficulties do not admit of a simple solution. However, for our purposes a number of points are reasonably clear. The background of the homily is the angels' jealousy of man and the rivalry between them.[113] This hostility is a recurring motif in midrashic literature, and characterizes the angels' relations with Adam. The dual image of Jacob – "engraved on high" and "sleeping below" – appears in additional aggadic sources, some of them in a similar context. For instance, "It was taught: They would ascend and look at the icon (*diukan*) above and descend and look at the icon (*diukan*) below. They wished to hurt him, when 'Behold the Lord stood beside him' (Gen 28:13)."[114] Yet another midrash reads: "'For you have striven with God' (Gen 32:29): You are the one whose image [*eikonkha*] is engraved on high."[115]

111 See Kugel, "Midrashim"; Kister, "Observations," 19–20; Wolfson, "Image of Jacob," 133–139.

112 *Genesis Rabbah* 68.12 (p. 626). This wording appears in all the manuscripts; see Friedman, "Graven Images."

113 Albeck notes (*Genesis Rabbah*, ibid., n. 1) that the words "dancing, leaping" connote derision and anger. On the rivalry between the angels and men in the midrash, see Altmann, "Gnostic Background"; Schäfer, *Rivalry*.

114 *b. Hul* 91b.

115 *Genesis Rabbah* 78.3 (p. 718). Compare Kister, "Observations," 19–20.

For our purposes, the parable cited at the end of the paragraph is of particular interest.[116] This parable was apparently borrowed from the Roman world, and its precise context remains unclear.[117] But notwithstanding its difficulties, its purpose is clear: it stresses that the relationship between the various images/icons of Jacob is not comparable to the relationship between two separate and distinct objects. Just as the king sleeping in his chamber is the same king who simultaneously holds court, so too the relationship between Jacob "on high" to the sleeping figure "down below" is almost a relationship of identity. Like the term *demut*, the term *eikonin* does not connote a replica, distinct from the "original," but rather refers to the contours of the object itself. This point is particularly striking in the passage from *Bavli Hullin* in which the word *diukan* refers to the Jacob above, but at the same time denotes the actual Jacob sleeping down below. The parable thus alludes to a conception in which the relationship between the likeness and the prototype is an ontological relationship of presence: the terrestrial likeness is an extension of the celestial likeness.

Shamma Friedman has demonstrated that the image/icon of Jacob "on high" found in the midrash in *Genesis Rabbah*, identical to that of Jacob sleeping below, is actually the image of God. Friedman attributes the variant of the myth which has Jacob's image engraved on the Throne of Glory to later sources. In the earlier, amoraic sources, it was the image of God[118] Himself that was inscribed on the throne. One of Friedman's main proofs of this claim is a passage from *Bavli Bava Batra*: "The beauty of R. Kahana was like the beauty of R. Abbahu; the beauty of R. Abbahu was like the beauty of our father Jacob; and the beauty of Jacob was like the beauty of Adam."[119] In the Hamburg codex another sentence appears in this paragraph: "and the beauty of Adam was like the beauty of the Shekhinah."[120] This same notion appears in the parable from *Genesis Rabbah* cited above. The king "sitting in judgment in a judgment chamber" is not an *eikonin* inscribed on the throne, but rather the king himself. Similarly, the image of Jacob "on high" is not inscribed on God's throne, but rather inscribed, as it were, on God himself.

In view of this seemingly radical idea, the following midrashic passages come as no surprise:

And he erected there an altar and called it *El-elohei-Yisrael*:" ("El, the God of Israel": Gen 33:20). He [Jacob] declared to him [God]: You are God in the upper realms and I am God in the lower realm.[121]

[116] See Albeck's discussion in *Genesis Rabbah*, ibid., n.3.

[117] See Friedman's discussion, "Graven Images."

[118] Ibid. The "throne" referred to in *Genesis Rabbah* 82.2 (p. 978): "Jacob whose features (*eikonin*) are engraved on my throne" is interpreted by Friedman as a metonymy for "engraved on high."

[119] *b. Bava Bat* 58a; see also *b. Bava Mets.* 84a.

[120] The Hamburg codex was copied in Gerona in 1184, and has always been regarded as a particularly reliable Talmudic manuscript. See Friedman, "Graven Images."

[121] *Genesis Rabbah* 79.8 (p. 734).

R. Aha said in the name of R. Eleazar: How do we know that the Holy One, blessed be He, called Jacob El [God]? As it says, "And he called it *El-Elohei-Yisrael*." For were you to think that Jacob called the altar "*El*," then it should have been written: "And Jacob called it." Rather [we must understand the phrase] "He called Jacob El." And who called him *El*? "The God of Israel."[122]

R. Pinchas in the name of R. Reuben: The Holy One said to his world: "My world, My world! Shall I tell you who created you, who formed you? Jacob created you, Jacob formed you! As it is written, "Who created you, O Jacob, who formed you, O Israel." (Isa 43:1)[123]

"And listen to Israel, your father" (Gen 49:2). R. Pinchas said, "Israel your father, is a God."[124]

These passages express Jacob's divinity both from his own perspective and from that of God. However, Jacob is not an independent divine being; rather, his divinity stems from God.[125] Reading these sources as complementing one another yields the following picture: Jacob is the image of God, and for that reason is an extension of Him; in other words "a God in the lower realm."

8. "I, I am he" (*ani ani hu*)

The concept of God as present in humanity or in Israel by reason of their being created in His image also appears in a *piyyut* (liturgical poem) by Eleazar ha-Kalir discovered in the Cairo Geniza.[126] This text, portions of which are brought below, was originally part of a *kedushta* (liturgical poem recited during the repetition of the Amidah) for Rosh Hoshanah, entitled "This day was ordained of old to be a day of judgment."[127] The *piyyut* includes a powerful explication of the concept of God inhering in man or in Israel. While the term *zelem* does not appear as such in the hymn, it is clearly alluded to in a number of places. The theme of the hymn is the angel's consternation with the Divine forgiveness of man (or Israel) and justification of him on the Day of Judgment:

> And they [the angels] were astonished at the vindication of the innocent
> for what was the merit of the smallest of nations (Deut 7:7)
> to be the justified among of all the peoples?
> And before their Creator they declared
> What is man that he should be remembered on High? (Ps 8:5)
> For he is the most despised of all nations.

[122] *b. Meg* 18a.
[123] *Lev. Rabbah* 36.4 (p. 460).
[124] *Genesis Rabbah* 98.3 (p. 948). See also in *Genesis Rabbah* 77.1 (p. 710).
[125] Compare Wolfson, "Image of Jacob," 135–136.
[126] Yahalom and Lefler, "Who Would Not Fear Thee." A number of chapters from the hymn were printed in Yahalom, *Poetry and Society*, 238–240.
[127] This *Kedushata* is part of the Ashkenazic liturgy to this day. However, the last part is missing, and it was replaced by the famous hymn *Unetane Tokef*, see Yahalom, ibid.

And what is the son of man to be counted for existence?
For he is full of strife and his days are few (Job 14:1)
And why should he be accounted before the Rock who is perfect
For he is tainted by all blemishes.
And what can be proclaimed before the most elevated
And his loftiness shall be cast down in the abyss (Isa 2:17)?[128]

And God replies to the angels:

And then the Most High answers in their presence
To tell them their answer:
What can you wrest from them
Why be thou jealous of the flock of men (Ezek 37:38)
For thou was created in their honor
To serve them and labor for them
And I and thou together shall glorify them
For my glory is their glory.
And I will stand among them to defend them (Ps 82:1)
To be called the Rock who begot them (Deut 32:18).
And you, why should you be amazed and anxious
Observe this and you shall know their glory.[129]

Further on, in words ascribed to God, Ha-Kalir emphasizes the powerful connection between humanity and God.[130] The following paragraph is clearly based on the zelem idea, and it also invokes the myth of the image of Jacob, referred to in the previous section:

Behold the throne of Glory constituted with their counsel
And from under the throne they implore for them
The images of their faces being the face of man (Ezek 1:10)
And engraved on the throne is the image of he who begat them
And those encouraging them were perpetually in prayer
And from above the throne the voice of man is heard (Dan 8:16)
And upon the image of the throne was the image as the appearance of a man (Ezek 1:26)
Desiring and accepting the repentance of man.
Cease from man (Isa 2:22)
For in all of my works he is my partner
This is the book of the generations of man (Gen 5:1)
And this is the Torah of man (Num 19:14)
Which is studied by men
And examined in their confession
And I will assent to them in all their gatherings.[131]

[128] Ibid., Chapter 6, lines 30–50; see Yahalom, *Poetry and Society*, 240.
[129] Ibid., Chapter 7, lines 51–62.
[130] Jacob Kirkasani, the Karaite actually accused Kalir of anthropomorphism. See Yahalom, ibid.
[131] Ibid., Chapter 9, Lines 70–85.

The connection between God and man/Israel receives an extreme, even erotic, expression in what follows:

> For this is a statute for Israel (Ps 81:5)
> An ordinance of the God of Jacob
> And if it be a Holy convocation down below
> It is a day of Judgment on High
> And if he is so important
> How do you say in what is he to be accounted (Isa 2:22)
> And if he be vindicated for that which he is
> **And he will understand that I, even I, am he** (Deut 32:39)
> **Forever shall we be alone together, I and He**
> And You shall be outside his dwelling.[132]

Apparently, Ha-Kalir not only composed a *piyyut* about the profound intimacy that characterizes the relationship between God and Israel. It is also replete with expressions that indicate a kind of fusion between the two entities: "I, I am he. Forever shall we together, I and He," "for my glory is their glory," etc.[133] This text and its prolific allusions to Biblical and midrashic sources requires a detailed analysis beyond the framework of this book. I have surveyed it all too briefly here because Ha-Kalir gives poetic expression to ancient ideas rooted in the midrashic sources analyzed earlier.[134]

The array of sources discussed indicates the prevalence of the iconic conception of image and likeness in Talmudic literature, particularly in its tannaitic stratum. The proposition: *zelem* A is the image, or in the image of, B expresses the view that prototype B inheres in A, its likeness. The terms *zelem* and *demut* (and their Greek equivalents, *ikonin/diukan*) appear in a variety of contexts in Talmudic literature, the most prominent of which is their predicating the God–man relationship. "Image" theosophy is thus based on an anthropomorphic conception: the form that God and man share is what allows for their fusion. Numerous sources indicate the nexus between the determination that man is an image of his Creator and the attribution of divinity to man. Hillel describes his body as an image of God or, in other statements, God speaks from his throat. In the blessing preceding the cleansing of the body in the "House of Honor," the angels are beckoned to give honor to the "God of Israel." The midrash states, concerning the child born "in our image after our likeness," that the Divine presence inheres

132 Ibid., Chapter 11, lines 100–109; Yahalom *Poetry and Society*, 238 (emphasis mine – Y. L.).

133 See *Mekhilta de-Rabbi Ishmael, Shira* 3, p. 25: "'This is my God and I will adorn him:' Abba Shaul says: I will be like him, just as He is gracious and merciful, so too you should be gracious and merciful." See also *b. Shab* 133b. On this homily, Rashi comments (*s.v. "be like him"*): "the language 'and I will adorn him', I and he." In other words, in Rashi's view Abba Shaul explains the word *anvehu* as being the combination of *ani – vehu* ("I and he"), a similarity and almost a merging of man with God.

134 See Yahalom, *Poetry and Society*, 238.

in him. Jacob is described as the replica (*diukan*) of God, being referred to as the "divinity in the lower realms."

We should stress that the *zelem* is not exhausted by the body and its form. The Talmudic emphasis on these elements must be understood in light of the monistic anthropology on which they are premised, identifying man with his concrete existence. Man's personality, his consciousness, and his senses – in short, the totality of his mental faculties – are all unified within his being, forming an integral part of the *zelem* conception. Hillel's recommendation to consume a "fine animal" on the very day one finds it ("Blessed be the Lord day by day") is not only intended for the maintenance of the human body, but also to give pleasure to it. Leaving the convict hanging not only causes degradation (decomposition) of the likeness, but also inflicts pain and mortification. These sensations and states of awareness are shared by God and man.

In most of the sources discussed previously, an implied conception of image as presence serves as the reason for a particular halakhah, custom or action. The operative aspect of the idea of creation in the Divine image confers a "serious" character to the idea, removing it from the category of a purely academic conception. Moreover, the halakhic applications of the *zelem* conception shed light on its theurgic aspect. Actions to preserve and nurture humanity are depicted in the sources as "actions done upon" or "for the sake of" God. This idea receives lucid expression in the characterization of Hillel as performing all his actions "for the sake of Heaven." Theurgy is thus a central and critical element in the *zelem* theosophy of the tannaim and, needless to say, their theurgy derives directly from its iconic dimension. This point will be elucidated in the following chapters.

The idea of *zelem* and its practical-halakhic ramifications was not unanimously endorsed by the Sages. If we assume the historical authenticity of the sources, the *zelem* theosophy was disputed by Shammai and Hillel. They ascribe the idea of *zelem* to Hillel, whereas Shammai is presented as rejecting it.[135] As we shall presently see, these conflicting views carried over to their tannaitic successors. In a number of the sources discussed above, Hillel's view appears in statements attributed to R. Akiva. Shammai's notions, on the other hand, echo in statements attributed to R. Eliezer (the "Shammaite") who demurs from the notion of the *zelem* and its halakhic implications. Having dealt with the sources dealing with creation in the Image, we shall now return to the laws of judicial execution, noting how this idea lies at their basis.

[135] I do not claim that all the details cited in *Avot de-Rabbi Nathan, Lev Rabbah*, and other Talmudic sources discussed above are historically authentic. Rather, my claim relates to the ideological kernel of the dispute attested to by many of the sources. To the best of my knowledge, there are no sources which contradict them. However, even if the historical accuracy of the attributions is questioned, the very fact that this dispute is attributed to the founding fathers of the rabbinic movement indicates the tremendous significance attributed to the dispute.

III. IMAGO DEI AND JUDICIAL EXECUTION

1. Image of God and "Death that leaves no mark"

The widespread concept of image as presence in Talmudic literature supports an iconic reading of R. Meir's statements concerning hanging, analyzed earlier. R. Meir and several other sources cited earlier utilize parables that are thematically similar to that of the king and his icons. The parable of "the statues of the kings" and that of the "twin brothers" both express the same idea applied to different concrete circumstances. In the former, Hillel explains why the maintenance and cleansing of the body is an act "for the sake of Heaven"; in the latter, R. Meir explains why the immediate removal of the hanging corpse prevents pain and humiliation to the Shekhinah. Just as with Hillel and the other sources discussed above, R. Meir also links the notion of the Divine image (parable of the twins) with the description of man in divine terms (*kal'ini me-roshi*).

This reading is also supported by another, more general consideration. As mentioned above, Talmudic literature ascribes the image conception to Hillel, R. Akiva, and his students. R. Meir was an integral part of this chain of tradition, and is clearly faithful to the Hillelite/Akivan notion of the divine image. Indeed R. Akiva's famous dictum in the Mishnah (*Avot* 3.14), "Beloved is man created in the Divine image," is ascribed elsewhere to R. Meir. Hence, an interpretation limiting the scope of his statements concerning hanging to the halakhic-ethical dimension alone effectively removes them from the tradition in which they are rooted.

The idea of creation in the image underlying the tannaitic law of hanging similarly underlies their reinterpretation of the nature of judicial execution.[136] If the Divine form inheres in man even after his execution, while he is hanging, then it does so *a fortiori* during his life. If the tannaitic conception of *zelem Elohim* compelled them to formulate the rule of hanging in a manner that avoided the degradation of man (i.e., the Divine image), then they would certainly have attempted to avoid his degradation and disfigurement in the execution proceedings themselves. The image conception therefore explains why, in execution by burning, "the soul burns and the body remains intact." It also explains why execution by stoning involves being pushed from a limited height. Similarly, *zelem Elohim* underlies the principle "Death at the hand of man leaves no mark." The tannaim invoked this principle in their fashioning the *mitzvah* of strangulation, which in their legal system was the default death penalty. The claim that the concept of Imago Dei served the Sages in their reconstruction of the methods of judicial execution is also supported by the following considerations:

[136] Halbertal already made this point in *Revolutions*, Chapter 7.4. I will discuss decapitation, which obviously deviates from this formula, in the next chapter.

a) Although the act of hanging takes place after execution (by stoning), it was nevertheless considered an integral part of the execution. Neighboring cultures, including that of the Romans, employed hanging as one of the forms of execution, and this was apparently the case in the Jewish tradition as well, at least until the end of the Second Temple period. Bearing in mind that the tannaim attributed awareness and sensory perception to the corpse for as long as its shape was preserved,[137] the distinction between hanging and the actual execution becomes even more blurred. The conclusion would appear to be that the motivation for the refashioning of hanging – that is, the idea of creation in the image in the iconic sense – is also (by implication) the motivating reason for the tannaitic refashioning of the modes of judicial execution.

b) This claim is supported by the location of R. Meir's teaching ("My head is pained") in the framework of the Mishnah. His homily completes the description of the criminal procedure (Chapters 4–8 of *Mishnah Sanhedrin*). Chapters 4–5 describe the trial procedure. This reaches its dramatic climax in Chapter 6, with the description of the execution culminating in the hanging ceremony. I have already mentioned that the editor of the Mishnah (R. Judah the Prince), chose the gravest form of execution, stoning, in his description of the entire criminal procedure, because this enabled him to continue without interruption to its culmination in hanging, which applies only to those executed by stoning. In Chapter 7 the Mishnah goes on to describe the other forms of judicial execution. The various forms of execution (including stoning) form the general framework, from 7.4 until the end of the tractate, for a detailed discussion of the specific offences for which each of the forms of execution is applied, appended to the description of each one. R. Meir's comments seamlessly fuse the criminal procedure that precedes them with the description of the other judicial executions that follows them. Conceivably, it was not by chance that his aggadic statement, which could be understood substantively as referring to both hanging and to the various methods of execution, was placed at that point in the Mishnah in order to express the conceptual model that governs the creation and the halakhic formulation of the four modes of judicial execution.

This analysis is congruent with the prevalent trend in contemporary research, which discerns careful and calculated editing of the Mishnah, based not only on formal, didactic considerations, but also, and primarily, on ideational models. This approach highlights the vital connections between the details of the halakhot included in the Mishnah, and the thought structures embedded in the interspersed aggadic dicta.[138]

c) R. Meir's statement itself alludes to this claim. Based on the Divine sigh ("my head is heavy for me . . ."), R. Meir infers: "and if so the Holy One grieves

[137] Lieberman, "After Life," 506, see *y. Avodah Zarah* 3 (42c), *Genesis Rabbah* 47.29 (p. 1237), *b. Berakhot* 18b.

[138] See Naeh, "Fruit of the Lips," 207–211; Shemesh, "Punishment of Flagellation," Chapter 9, and especially at pp. 231–232; Knohl, "Kingdom of Heaven," Appendix.

over the blood of the wicked that is shed ... ." The "wicked" refers to the criminal convicted of an offence punishable by death. The logic of the deduction ("if so") is simple. If the words "For God's curse is hanging" teach that God suffers together with the hanging person ("the wicked") then God certainly suffers with the person during the act of execution. R. Meir's observation thus *ipso facto* extends beyond the confines of the law of hanging, and his interpretation of "God's curse" becomes paradigmatic for his fundamental attitude to execution. The tannaitic attitude toward this execution will be discussed in the Chapter 7. At this point I will suffice with the observation that the sting of R. Meir's statement is that God's calumny and suffering in the process of execution is no less, and perhaps even more, than the degradation and suffering involved in the hanging itself. In other words, if the degradation and suffering caused by the hanging must be limited, then *a fortiori* they should be limited during the execution procedure. This would appear to have been Rabbi's underlying motivation in formulating the principle "execution at the hand of man leaves no mark," and it confirms the thesis that R. Meir's statement in the Mishnah is also an allusion to the ideational model that guided the formulation of judicial executions.

d) The claim that the laws of judicial execution are based on the idea of *zelem Elohim* is further buttressed by a more general consideration, akin to the one suggested at the beginning of this section, albeit operating in the opposite direction. At the end of the previous section, I argued for the "Hillelite" origin of the idea of *zelem*, from which it was passed down to R. Akiva, to his colleagues, and subsequently to his students, including R. Meir. This viewpoint was thus endorsed by the tradition from which the Mishnah itself was hewn and edited, in so far as "[the author of any] anonymous Mishnah is R. Meir."[139] As for R. Akiva, "his entire being bears the stamp of the leader of those who continued the tradition of the School of Hillel."[140] In view of the above, it may reasonably be presumed that the model proposed by R. Meir for the rule of hanging was not his own personal viewpoint, but rather a tradition with which he identified.[141] This conclusion supports the contention that R. Meir's statements apply to the entire complex of laws concerning judicial execution, which were almost certainly formulated one or two generations before him.

In this context I will note that Israel Knohl has demonstrated that the "Hillelite" understanding of man's creation in the Divine image is embedded in *Mishnah Berakhot*, Chapters 2–3, which deal with the acceptance of the yolk of the Kingdom of Heaven. Here too this conception is manifested in the *body*, and is manifested in the laws concerning the movements and bodily gestures

[139] *b. San* 86a; see Albeck, *Introduction to the Mishnah*, 99 ff; Goldberg, "R. Aqiba"; Epstein, *MLST*, 96 f.

[140] As Rosenthal claims, "Tradition and Innovation," 325 f; and see Albeck, *Introduction to the Mishnah*, passim.

[141] See Epstein, "R. Judah," 3.

associated with the recitation of *Shema*.[142] Knohl further adds that these chapters contain the traditions of R. Meir, who teaches in accordance with R. Akiva, and received their final editing at the hands of R. Judah the Prince. Aharon Shemesh observed that priests with bodily deformities were forbidden to serve in the sanctuary, and pilgrims with bodily defects were not allowed to present themselves in the Temple, because the tannaitic concept of sanctity was rooted in the wholeness of the body. Bodily defects displayed before God damaged that sanctity. The Torah describes the priest as being in an intimate relationship with God, whom he serves. The same applies to the pilgrim who comes "to see the face of God" and to be seen by Him. In the tannaitic perception (and perhaps in that of the Torah as well), the presence of deformed persons before the Deity was an act of defiance, for the Deity, reflected in human beings formed in His image, was injured when they (priests or pilgrims) would appear before him in a defective bodily state.[143] Just as in the passages discussed above, so too in the context of accepting the yoke of Heaven and of appearing before God in the sanctuary, the *zelem* is located in the body – in other words, in concrete being.

The *zelem* conception should not be confused with the phenomenon of "reasons for the commandments" (*ta'amei mizvot*); it is not a *post facto* rationale for an ancient halakhic tradition that in fact has entirely different historical roots. Judicial executions as formulated in the Mishnah (and in parallel sources) are a tannaitic creation, no earlier than the Yavneh generation. The tannaim replaced the disfiguring forms of execution with which they were familiar (from Scriptures, Roman law, and other sources) with modes of execution that left no or a minimal mark. As we saw, the Mishnah itself contains allusions to this, including the testimony of R. Eleazar b. Zadok that during Temple times burning meant burning proper; the story of R. Shimon b. Shetah who hanged 80 witches in Ashkelon; and R. Eliezer's approach to the law of hanging, which reflects the earlier halakhah. Together with these, the rabbis of the Yavnean and post-Yavnean generations expounded and developed the idea of creation in the divine image. If we accept the historical reliability of the sources that ascribe this idea to Hillel, we are forced to conclude that the formulation of these halakhot was rooted in an earlier ideational foundation, because in light of the extant literary and historical sources, the traditional earlier forms of execution were known and perhaps even practiced during Hillel's time (the second half of the first century BCE).

Even if we reject the historicity of the aforementioned midrashim, the fact remains that the Talmudic tradition ascribed the image conception (in a radical formulation) to Hillel, specifically, and the opposing conception to Shammai, both of whom were termed by the tannaim as "the Fathers of the World."[144]

142 Knohl, "Kingdom of Heaven," 26.

143 See also Shemesh, "Holy Angels," where he raises the possibility that *zelem* conceptions underlie these halakhot.

144 *m. Ed* 1.4 (see *Ben Sira*, 44.1, *t. Ed* 1.1 (454)).

This attests to the centrality and importance of this theosophy in tannaitic circles. In any event, it appears that the idea of creation in the Image guided the formulation of the judicial executions and, as we shall presently observe, it was the motivating principle for the activities of the tannaim in further halakhic areas.

2. Death at the Hands of Heaven Leaves No Mark

The iconic understanding of creation in the Divine image explains why God Himself, when meting out death, refrains from injuring the body, and why the human court emulates the divine method of execution. I refer here to the principle attributed to R. Judah the Prince: "Just as death at the hands of Heaven leaves no mark, so too death at the hands of man leaves no mark." As we noted above, this principle was applied generally to the formulation of the modes of execution: burning was derived from the death of Aaron's sons, stoning from the Sinaitic revelation, and strangulation was derived directly through this principle. In my understanding, the exegetical implication of this principle is that God does not harm the human body, in order to avoid harming His own semblance. Rabbi Meir's homily and his parable expressed this idea within the limited context of the laws of hanging. Rabbi elaborated upon the same idea, formulating it as a general principle. The difference between them is one of perspective. R. Meir's derashah (*kal'ini*) reflects the perspective of the human being concerned for the welfare of the Deity, whereas the first part of Rabbi's comments are framed from the perspective of the Deity, who takes life without leaving a mark in order not to injure Himself. The conclusion of Rabbi's dictum ("so too execution by the hand of man leaves no mark") – that is, the normative component – expresses the Sages' compliance with the "the needs of Heaven." From the human perspective, both statements are consistent with the hallmark characteristic of Hillel "whose actions were all for the sake of Heaven."

Even though both Rabbi and R. Meir endorsed the *zelem* conception, there is another salient difference between them. Rabbi views the forms of judicial execution as duplicating the nature of death meted out by the Divine, thereby assuming the conformity of the upper and lower realms. This harmonious accord is a far-cry from the irony of R. Meir's parable. As I showed above, the parable of the twin brothers presents the law of hanging as an expression of the king/God's desire for vengeance, unaware that in doing so he harms himself. Rabbi, on the other hand, presents God as realistic and calculated – and as overcoming his destructive tendency: he avoids leaving any mark on human beings, and in so doing prevents (or restricts) harming himself. The Mishnah's explanation of the law of hanging, and R. Meir's parable of the twins, reveal a "cantankerous, stormy divine personality," akin to that of the zealous Biblical God who, were it not for the mollifying acts of the Sages, would have devoured itself as well.

At this juncture one can discern the link between the role assumed by some of the prophets and that role assumed by the tannaim in our subject. In a highly enlightening essay, Yohanan Muffs demonstrates that one of the character traits sought by God in a "true prophet" is the courage and fortitude to struggle on behalf of the people against God. Muffs emphasizes that the goal of this is to save God from His own wrath and fury – in other words, from Himself. This prophetic mission finds expression in the activities of many of the prophets, among them Moses, Samuel, and Jeremiah. Its sharpest and most conscious expression is found in the words of Ezekiel: "And I sought a man among them to repair the wall or to stand in the breach before Me in behalf of this land, that I might not destroy it" (Ezek 22:30). Muffs assembles a collection of rabbinic sayings and homilies that illuminate this aspect of the prophetic vocation.[145] As the prophets' successors (see *m. Avot* 1.1), the Rabbis assumed this aspect of the prophetic mantle. What Moses, Samuel, Jeremiah, and Ezekiel achieved through prophecy, the Rabbis endeavored to achieve by study and expounding the Torah. One example of this, applicable to our discussion, appears in an amoraic tradition recorded in *Bavli Hagiga* 16b:

Rabbah bar Shila once came upon Elijah the prophet. He said to him: What is the Holy One blessed be He, doing? He replied to him: [God] is repeating the teachings from the mouths of all the rabbis, but from the mouth of R. Meir he is not repeating any teachings. He asked him: Why? Elijah replied: Because he [R. Meir] learned teachings from the mouth of *Aher* (Elisha ben Abuyah). He said to him: But why is that counted against R. Meir? R. Meir [treated Aher's teachings like] a pomegranate: he ate the insides and threw away the peel. Elijah said to him: God has been persuaded by your argument and He is now saying: My son, Meir says, "When man suffers, what does the tongue say? My head is too heavy for me, my arm is too heavy for me. And if thus the verse says, 'I suffer over the blood of the wicked,' how much more so over the blood of the righteous."

The background of this story is R. Meir's complex relationship with Elisha b. Abuyah, who became a heretic and thus was known as *Aher*, meaning "the Other." The question under discussion in the Talmudic passage in which this story appears is whether it is permitted to learn Torah from an evil *talmid hakham* (scholar).[146] R. Meir studied Torah from Elisha, and Elijah initially states that for this reason God desisted from studying R. Meir's teachings. When Rabba bar Shila challenges this reasoning, declaring that R. Meir knew how to separate the wheat from the chaff,[147] Elijah responds that God has resumed his study of R. Meir's teachings. The specific teaching to which God first returned to was our Mishnah of *kal'ini*. The question is: Why, of all the plethora of R. Meir's

[145] Muffs, "Intercession," 69–74, and see references there; *Avot de-Rabbi Nathan*, 47.

[146] See Liebes, *Elisha's Sin*, Chapters 4, 5.

[147] The "peel" refers to evil deeds and not errant wisdom. Rabbah bar Shila's claim is that R. Meir was capable of learning from Elisha's wisdom without being influenced by his actions. The counter claim raised in the passage resembles the Socratic-Platonic position, which rejects the separation between thought and deed.

teachings, did God choose this particular homily? It would seem that the answer is that in this particular Mishnah R. Meir expresses his concern for God Himself. To put the point bluntly: God is well advised to return to the study of R. Meir's teachings, because in doing so He benefits Himself. Conceivably, it may even have been the *kal'ini* Mishnah that persuaded God that if R. Meir "found a pomegranate, he ate the insides and threw away the peel." After all, the story itself does not adduce any support for R. Meir's justification, that he discarded the chaff found in Aher's teaching. Rather, in terms of its structure, the *kal'ini* Mishnah provides the reason for this conclusion, as if to say: R. Meir's concern for the Divine Presence proves that his teachings are unimpeachable.[148]

Understanding the refashioning of judicial execution in light of the *zelem* conception may seem paradoxical because upon further reflection the *zelem* conception undermines the very justification for execution itself. This difficulty becomes more acute in view of the conception of image as presence. If man as a whole, including his body and personality, is in the Divine image and likeness, then his execution, even when leaving no mark, damages the Godhead. Might it not be argued that the depiction of humanity as being an image of God in fact removes the very foundation of the death penalty itself? The tannaitic approach to this question, which we alluded to above, will be discussed in Chapter 7.

[148] See Liebes, *Elisha's Sin*, Chapters 5, 6.

7

Murder and Capital Punishment: Diminishing the Divine Image

In the final analysis, the iconic theosophy discussed in the previous chapters undermines the actual performance of judicial executions. As we shall presently observe, the statement that "He who sheds blood diminishes the likeness" can and was extended to include judicially sanctioned "murder." The tannaim regarded the execution of the criminal, including that of the murderer, as a form of negative theurgy because it damages God, who is present within the criminal just as He is in every human being.

I. "HAD WE BEEN MEMBERS OF THE SANHEDRIN NO ONE WOULD EVER HAVE BEEN PUT TO DEATH"

The final Mishnah of *Makkot*, Chapter 1, which completes the corpus of laws dealing with capital jurisdiction (*dinei nefashot*), contains the following statements:

> A Sanhedrin that executes once in seven years is called destructive.
> Rabbi Eleazar b. Azariah says: once in seventy years.
> Rabbi Akiva and Rabbi Tarfon say: Had we been members of the Sanhedrin, nobody would ever have been put to death.
> R. Shimon b. Gamliel says: They [too] would have multiplied those who spill blood in Israel.[1]

At first blush this Mishnah is perplexing. Having presented the entire criminal procedure regulating the modes of judicial execution and the 28 offences punishable by death,[2] the Mishnah concludes by presenting a view according to which conviction and actual execution are rare and undesirable events. In principle, there is no dispute between the anonymous first opinion and those of R. Eleazar b. Azariah, R. Akiva and R. Tarfon. The gradation of their views in ascending

[1] *m. Mak* 1:10.
[2] See *m. San.* 7:4 (17 cases of liability for stoning); 9:1 (two for burning, and two for decapitation); 11:1 (seven for strangulation).

order ("once every seven years," "once every seventy years," "never") is a rhetorical device to express principled opposition to capital punishment. Moreover, a reader familiar with the procedures used, according to the tannaim, to adjudicate capital crimes, will not be surprised at this statement. The formidable array of procedural obstacles involved in capital cases makes any possibility of conviction highly unlikely, if not impossible.[3] To cite but a few of these laws:

a. Unlike Biblical law (Lev 5:1), tannaitic halakhah imposes no obligation to testify against one accused of a capital offence.[4] This is of great significance because testimony is an essential prerequisite of conviction, as stated in Deuteronomy 19:15: "by the mouth of two witnesses or by the mouth of three witnesses shall a matter be established." The absence of a provision compelling a witness to testify against an accused criminal contrasts with the duty to testify on behalf of the accused in capital cases and the general duty of testifying in civil matters.[5] It should also be noted that the duty to testify in criminal cases was prominent in sectarian halakhah, as it was in other ancient legal systems.[6]
b. The tannaim introduced punctilious procedures for examining witnesses: "It once happened that Ben Zakkai examined [the witness] regarding the stems of the figs,"[7] which Rashi explains, "they testified against him that he had killed a person under a fig tree and Ben Zakkai asked whether the stems were thin or thick." Rabban Yohanan b. Zakkai examined the witnesses down to the minutest detail, and would have disqualified their testimony had he found any discrepancies between the two. This meticulous examination is part of a broader set of rules prescribed by the tannaim for disqualifying testimony:

Anyone who increases the examinations [of the witnesses] is praiseworthy ... Be it in the *hakirot* [questions relating to the time and place of the crime] or in the *bedikot* [other circumstances pertaining to the actual offence]: if the witnesses contradict each other, their testimony is void.

Similarly, "a testimony which has been partially annulled is completely annulled."[8] In contrast to modern criminal law, according to tannaitic halakhah the judge has no discretion to choose those elements of the testimony that he believes to be reliable and substantiated as the basis of a judicial conviction. We should note that when it comes to civil matters there is an opinion (R. Jose, who disagrees with R. Judah ha-Nasi) according to which "the testimony may be

[3] See Moore, *Judaism*, 187; Blidstein, "Capital Punishment," 163; Greenberg, "Criminal Law," 29.
[4] The only exception is regarding the one who incites others to worship idols, see *Sifre Deuteronomy* 89 (152).
[5] *Sifra, Kedoshim*, 4: 8 (89a) and *Sifra Diburah de-hovah*, 11: 1–2; *b. Sheb* 34a (respectively).
[6] See *Damascus Covenant*, 9:16–24; Schiffman, *Halakhah*, 174 ff. Regarding Greek and Roman law, see Cohen, *Jewish and Roman Law*, 2: 745–746; See Shemesh, "Testimony, Rebuke, Warning"; cf. Albeck, "External Halakhah."
[7] *m. San* 5.2; *b. San* 40a; see also *m. Avot* 1. 9; and *Avot de-Rabbi Natan*, Version B. Chapter. 20 (42); Kister, *Avot de-Rabbi Nathan*, 126.
[8] *m. San* 8.2 [*m. Mak* 1.7]; *b. Bava Kam.* 73a (and numerous parallels); *b. Yoma* 83a (respectively).

substantiated by the others" (*m. Mak*. 1.8), meaning that if one (or more) witnesses' testimony has been refuted, the case may still be tried based on the testimony of the other witnesses.

c. According to tannaitic halakhah, circumstantial evidence is inadmissible.[9]
d. According to tannaitic halakhah, confessions and self-incriminations are inadmissible.
e. Tannaitic halakhah also establishes blanket rules concerning the disqualification of witnesses:

Just as with two witnesses, if one of them is a relative [of the accused] or disqualified, their entire testimony is invalid, so too it is with three witnesses: if one of them is a relative or disqualified, their entire testimony is invalidated. And how do we know that even if there are one hundred [and one is disqualified, they are all disqualified]? Scripture says, "witnesses."[10]

According to this exegetical interpretation, the first appearance of the word "witnesses" in Deuteronomy 17:6 ("By the mouth of two witnesses, or three witnesses, shall he that is to die be put to death") is intended to prescribe that, even when there are many witnesses, they are regarded as two witnesses in the event that one of them is disqualified.

f. Most important, the accused must be admonished by the witnesses prior to the commission of the offence.

And other persons liable for execution may not be convicted unless by witnesses and their having been warned, and until they (the witnesses) inform them that they will be liable for judicial execution. R. Jose b. R. Judah says: until they inform them regarding the specific method of death by which they would be executed . . . If they warn him and he was silent, if they warn him and he nods his head, or even if he stated "I know," he is exempt: until he says, "I know, and nevertheless I commit [the transgression]."[11]

Clearly, the duty of warning almost completely eliminates any possibility of conviction, especially according to the exaggerated requirements for warning listed by R. Jose b. R. Judah. It is almost inconceivable that a person would publicly commit an offence in the presence of witnesses who had warned him thus and that he would respond in such a manner.

Scholars have already observed that these laws protect not only the wrongfully accused, but also prevent the conviction of the guilty.[12] I do not claim that this was the overall purpose of these requirements. Some of them may have originally been intended to protect innocent suspects, and others may have been based on other considerations. However, examination of the procedure in its

[9] *t. San* 8.3 (427).
[10] *t. Mak* 1.9 (439). Regarding the disqualification of witnesses, see *m. San* 3.1, 3.4.
[11] *t. San* 11: 1–4 (p. 431) ibid., 12:7 p. 433*; m. Mak* 1; *b. San* 81b; and *m. San* 5.9. The baraita in Sanhedrin further states that "He is not liable until he commits the murder while the warning is being uttered." See Shemesh, "Testimony, Rebuke, Warning," 168.
[12] Blidstein, "Capital Punishment," 164.

entirety highlights the system's failure to distinguish between the innocent and the guilty. The whole is intentionally structured to lead to the acquittal of all persons accused, be they innocent or guilty in reality.[13]

Another Mishnah in *Sanhedrin* may also allude to the acquittal of the accused as the overall purpose of the structure of capital procedure. The immediate concern of this Mishnah is to provide a prooftext for the need for 23 judges in capital cases. Quoting Numbers 35:24–25, the Mishnah states: "'And the community (*edah*) will judge and the community will save' – One community judges, and the other community saves [i.e. acquits]."[14] In other words, more than it serves as a forum for judging the accused person suspected of a capital crime, the composition of the Court was formulated with a view to saving the accused from such conviction.

Hence, R. Eleazar b. Azariah, R. Akiva and R. Tarfon did not make their statements in a vacuum. The ultimate purpose of the details governing criminal procedure is explicitly expressed in their words, placed by the editors of the Mishnah in that very Mishnah that concludes this corpus of rules. Indeed, the amoraim relied on the method of interrogation and examination of capital witnesses to explain their position:

> What did they do [to ensure that no one would be convicted]? R. Yohanan and R. Eleazar both say: [They would ask the witnesses] "Did you notice whether he (the victim) was [perchance] suffering from some fatal condition or was he perfectly healthy?" R. Ashi said: And should they reply, "Perfectly healthy," [they ask him] "Perhaps there was already a hole [in the victim's body] at the place where the sword went in?"
>
> How would they act with matters of illicit sexual relations? Both Abbaye and Rabba say: [They ask the witnesses:] "Did you see 'a tube in a flask' [a metaphor for sexual penetration]?" (*b. Mak* 7a)

This approach was not accepted by all of the other sages. In that very Mishnah, R. Shimon ben Gamliel rebukes them by saying, "They too would have multiplied those that shed blood in Israel." A similar approach also appears in *Midrash Tannaim* (Deuteronomy) in the name of R. Eliezer:

> "Do not take pity on him" (Deut 19:13) – this is a warning not to have mercy over a murderer. That they should not say, "This one has already been killed; what use is there in killing the other?" And they are lackadaisical in his killing. Rather, he must be executed.
>
> Abba Hanun says in the name of R. Eliezer: In all those places in which the Torah specifies an [apparently] unjust punishment, it is written "Do not take pity on him, but you shall remove the blood of the innocent from Israel, that it may go well for you." When you remove those that spill blood from the land, you bring goodness to the world.[15]

[13] This, for example, is the way to understand most of the homilies and laws concerning the rebellious son and the city incited to worship idols. See *m. San* 8.4; and *Sifre Deuteronomy* 219 (p. 252), and *b. San* 71a.

[14] *m. San* 1.6 (emphasis mine – Y. L.).

[15] *Midrash Tannaim* 19:13 (115).

These comments refer to a murderer whose guilt is beyond doubt. In the background we are aware of the approach taken by R. Akiva and his colleagues. R. Eliezer, and R. Shimon b. Gamliel after him, refuse to forego the societal benefit of deterrence that is a result of the implementation of the death sentence. R. Eliezer notes that, even though execution constitutes "inappropriate punishment" (perhaps too severe?), it is nonetheless justified, for "when you remove those that spill blood from the land, you bring goodness to the world."[16] This approach was shared by R. Shimon b. Gamliel, who also refers to "those that spill blood." It is possible that these same tannaim were not particularly troubled by transgressors of "religious" capital prohibitions, such as the Sabbath, forbidden sexual relations, idol-worship, etc., who may have escaped execution. The explicit reference to murderers indicates that the focus of their critique was societal welfare. On the other hand, one cannot exclude the possibility of an implied criticism of the exemption granted to "religious" offenders as well.[17] The focus on murderers may merely allude to the abdication of social responsibility inherent in the opposing view.

Talmudic literature does not tell us what R. Shimon b. Gamliel and R. Eliezer thought of the rules of the criminal procedure described above which, as noted, generally coalesce with the approach taken by R. Eleazar b. Azariah, R. Tarfon and R. Akiva, undermining as they do the very possibility of conviction for a capital crime. Did R. Eliezer and R. Shimon b. Gamliel subscribe to an alternative criminal procedure? The absence of sources prevents a resolution of this question, but it should be noted that the particulars of criminal procedure in the Mishnah and in other related sources originate in R. Akiva's school of thought, and it cannot be inferred with certainty that all the tannaim endorsed them.

Irrespective of the answer to this question, the position adopted by R. Eliezer and R. Shimon b. Gamliel serves to highlight the radical nature of R. Akiva and his school. The criticism by the former indicates that the latter's opposition to judicial executions extended even to murder. It is noteworthy that capital punishment was generally perceived in antiquity as a salient means of deterrence and prevention, and it was not claimed, as it is by some today, that it was not an effective deterrent.[18] The opposition to capital punishment even for murderers attests to the decisive weight imputed by R. Akiva and his colleagues to the rationale which underlies their opposition: the idea of creation in the image of God in its iconic sense.

[16] A similar approach is ascribed to R. Eliezer in other tannaitic sources. See *Midrash Tannaim* 15.18 (p. 87) and ibid., 14.29 (p. 80). See also *Sifre Deuteronomy* 186–187 (pp. 226–227).

[17] This would seem to be the opinion of the amora Samuel in *b. Mak* 7a.

[18] See Blidstein, "Capital Punishment," 164.

II. "THE VERSE SAYS: 'I SUFFER FOR THE BLOOD OF THE WICKED . . . THAT WAS SHED'"

Reservations regarding capital punishment are also alluded to in R. Meir's words concerning hanging. After R. Meir roots the symbolic nature of hanging in tannaitic halakhah on God's grief at the hanging person's suffering ("When a man suffers, what does the [Divine] tongue say? My head is pained, my arm is pained"), he adds: "And if thus the verse says, 'I suffer for the blood of the wicked,' how much more so for the blood of the righteous that was shed."[19] The logic here is simple: If God is demeaned and suffers with the convict *after* his execution while he is hanged, then *a fortiori* he suffers with him *during* the execution. Two terms appearing in this conclusion catch the eye: "wicked" and "bloodshed." In rabbinic idiom, the term "wicked" (*rasha'*) usually refers to transgressors,[20] and in this context refers to the individual (a blasphemer or an idol worshipper) who was convicted and hanged. The term "wicked" therefore indicates that R. Meir has no reservations regarding the person's guilt. The appearance of this term in the middle of the passage is particularly striking when compared with the word "man" (*adam*) at its beginning ("when man suffers"), and "righteous" at its conclusion ("how much more so over the blood of the righteous that is shed"). The word "man" refers even to the hanged convict and, as argued above, alludes to creation in the Divine image – as if to say that this idea applies to all men, wicked and righteous, even those sentenced to death. Nonetheless, the role of the *a fortiori* argument in the passage remains somewhat unclear. It may conceivably allude to the blood of the righteous that was spilt during various Roman persecutions.[21] Alternatively, the words "how much more so for the blood of the righteous" may be a later addition, and the passage may have originally read: "[. . .] thus the verse says, "I suffer over the blood of the wicked that is shed." This reading is congruent with the statement's general context in the Mishnah.

R. Meir refers to execution as an act of "bloodshed." Execution, even where there is no doubt of the condemned's guilt, is tantamount to murder. As mentioned, R. Meir's words derive from his iconic conception of creation in the Divine image, and reflect the theosophy underlying the opposition of his teacher, R. Akiva, to the implementation of judicial execution. This theosophy is also present in R. Akiva's dictum, "He who sheds blood is regarded as though he had annulled the image, as it says, 'Whoever sheds the blood of man, by man shall his blood be shed [For in God's image did He make man]' (Gen 9:6).[22]

[19] *m. San* 6.10. See also, with slight variations, the Parma (de Rossi) manuscript and compare to the printed edition in Yalon-Albeck.

[20] See *b. San* 25a-b.

[21] Liebes, *Elisha's Sin* 84.

[22] *t. Yeb* 8:4 (250), according to the Erfort manuscript. The Vienna manuscript reads, "annuls the likeness." See *t. Yeb* (ed. Lieberman), 26. *Tosefta Kipeshuta, Yebamot*, p. 74.

The implication of this dictum with regard to capital punishment is clear: If bloodshed negatively affects the Divine, then there is no distinction between "permitted" execution (by the court) and "prohibited" execution (by a murderer), or between the execution of the wicked and the execution of the righteous. The killing of any person created in the Divine image "diminishes" God and is to be avoided. This statement and its implications for the tannaitic approach to capital punishment will be discussed further below.

The redactor of the Mishnah placed R. Meir's statement at the end of the section describing how executions were performed, and R. Akiva's view at the end of the entire corpus dealing with capital cases (*dinei nefashot*).[23] In doing so, he emphasized his own deep reservations regarding the execution of the criminal.

A diametrically opposed view is expressed by R. Eliezer, who regards the execution of "the wicked" (i.e., a murderer) as "the purging of evil" which "brings goodness to the world."[24]

The consequences of murder on the Divine also find expression in a passage from *Mekhilta de-Rabbi Ishmael* according to which the stoning of an ox that had gored a person to death "defiles the land and causes the departure (*mesalek*) of the Divine Presence (*Shekhinah*)."[25] An ox is not a moral agent, and the departure of the Shekhinah cannot be interpreted as a metaphor or a response to an immoral act of the ox or to immoral negligence on the part of its owner.[26] Rather, this statement must be construed against the background of the connection drawn by R. Akiva between God's presence in humanity and the notion of humanity's creation in God's image. Like any other shedder of blood, the condemned ox "causes the departure of the Divine Presence," because God dwells in the person murdered. The act of murder causally leads to the diminishment of the Presence.

R. Eliezer did not share this theosophic outlook. Scholars have long noted that, in other contexts as well, there is a certain affinity between R. Eliezer's view and Shammai's understanding which, as mentioned, rejected Hillel's radical understanding of the notion of *zelem*.[27] Evidence for R. Eliezer's opposition to this notion may be found in the following two *beraitot* from *Tractate Yebamot*, the first of which reads as follows:

> It was taught: R. Eliezer says: He who does not engage in procreation is as if he sheds blood, as it says, "Whoever sheds the blood of man, by man shall his blood be shed" and it is written immediately after, "And you, be fruitful and multiply."

[23] Tractates *Sanhedrin* and *Makkot* were originally one tractate, and they appear in this form in a number of manuscripts, see Albeck, *Mishnah, Nezikin*, 165.

[24] Although these sources are not ascribed directly to R. Eliezer, they express his approach. See also *Sifra*, *Kedoshim* 11. 7 (93a).

[25] *Mekhilta de-Rabbi Ishmael, Nezikin*, 10 (p. 79).

[26] Compare Zohar, "Animals"; regarding the Biblical background of this law, see Greenberg, "Criminal Law," 23–24.

[27] See Knohl, "Kingdom of Heaven," 25–26.

R. Jacob says: It is as though he has diminished the Likeness [demut], as it says, "For in God's image did He make man" and it is written immediately after, "And you, be fruitful and multiply."

Ben Azzai says: It is as though he sheds blood and diminishes the Likeness [. . .][28]

This baraita will be discussed in Chapter 8. Here we will focus on R. Eliezer's view. First, a few textual clarifications. In a number of manuscripts, R. Jacob's comments are attributed to R. Akiva.[29] Immediately following this baraita, the Bavli cites:

Another [baraita] teaches: R. Eliezer said, He who does not engage in procreation is as if he sheds blood, for it is said, 'Whoever sheds the blood of man, by man shall his blood be shed,' and close upon it follows, 'And you, be fruitful and multiply . . . .' R. Eleazar b. Azariah says: It is as though he has diminished the Likeness. Ben Azzai says . . .[30]

R. Eliezer's comments are identical in the two *beraitot*, but in the second one the disputant is R. Eleazar b. Azariah, who expresses the same view as that attributed to R. Jacob (or R. Akiva) in the previous baraita. A similar tradition appears at the end of *Tosefta Yebamot* Chapter 8, and in *Genesis Rabbah* 34.4. Both these sources begin with R. Akiva's statement that one who sheds blood annuls (or diminishes) the Image (see earlier), followed by the words of R. Eleazar b. Azariah and Ben Azzai concerning procreation, as well as their exchange (in the *beraitot* in the Bavli, the exchange is between the Sages and Ben Azzai). R. Eliezer is not mentioned in either of these traditions.

It may be that the Bavli's tradition regarding R. Eliezer's comments is corrupted and, therefore, cannot be relied upon as an accurate reflection of his views. The Bavli's attribution of the statement to R. Eliezer is after all *sui generis*. Talmudic literature frequently substitutes R. Eliezer for R. Eleazar, as well as vice versa.[31] The tradition ascribed to R. Eliezer may have evolved from a conflation of the words of R. Eleazar b. Azariah with those of Ben Azzai, deleting the phrase "diminishes the Image." However, these considerations do not suffice to invalidate the fact that the Bavli's ascription of the opinion to R. Eliezer is found in most manuscripts and in both *beraitot*. Attempts to explain how this corruption came about are speculative and, more important, do not explain why this statement omits the important clause concerning the diminishment of the Image. Moreover, it seems unlikely that in the second baraita R. Eliezer replaced R. Eleazar, because there they are presented as conflicting opinions.[32] This authenticity of the Bavli's ascription is supported by the fact that a conception similar to that espoused there by R. Eliezer is ascribed to him later on in the same

[28] *b. Yeb* 63b.

[29] For a different wording, see (Tractate) *Yebamot* with different versions, 425–427.

[30] *b. Yeb*, ibid.

[31] See Gilat, *Rabbi Eliezer*, 8.

[32] (Tractate) *Yebamot* with different versions, 426, 428; Gilat (*Rabbi Eliezer*, 278, n. 6), the *Bavli Yebamot* adopts the reading of "R. Eliezer."

section of *Bavli Yebamot* (see ibid.) in another baraita. These considerations lead us to cautiously accept the authenticity of this ascription.

R. Eliezer compares refraining from procreation with the shedding of blood on the basis of their textual proximity in Genesis 9:6–7. Apparently R. Eliezer deliberately ignores the words in the middle of these verses, "for in the Image of God He made man." This omission is particularly striking in light of the comments of R. Jacob (or R. Akiva)/R. Eleazar b. Azariah), formulated as a response and criticism to R. Eliezer. It is as if those tannaim who emphasize the diminishing of the Image were pointing out to R. Eliezer that the consequences of refraining from procreation are not limited to the human realm, but extend to the Divine realm as well. Ben Azzai goes even further: "It is as though he sheds blood and diminishes the Image." Refraining from procreation is similar to and of equal gravity with the shedding of blood, for they both diminish God.[33] R. Eliezer likewise establishes a connection between the halakhic prohibition of the "diminishing" of human beings and the duty to "procreate." But in his view this is unrelated to the *zelem* and *demut* theosophy and is divorced from the notion of the "Image of God." In fact, if we rely on the Bavli's tradition, R. Eliezer's "disregard" of the idea of creation in the Image, which is the focus of the chapter, is indicative of his reservations regarding that idea, or at least his reservations with respect to the theurgic-iconic aspect ascribed to it by R. Eleazar b.Azariah, Ben-Azzai, and R. Akiva (in *Tosefta Yebamot* and parallels).

A similar dispute is alluded to in another baraita cited in the immediate continuation of this Talmudic passage. In contrast to the statement of his colleagues, who contend that failure to engage in procreation causes "the Divine Presence to depart from Israel," Abba Hanun, in the name of R. Eliezer, suffices with the statement that he is liable for capital punishment. It is as if Abba Hanun were stating that, according to R. Eliezer, failure to engage in procreation is a grave matter, but has no bearing on the Divine Presence.[34]

The dispute between R. Akiva and R. Eliezer regarding the *zelem* theosophy underlies their divergent approaches to capital punishment. R. Akiva espouses the idea of creation in the Divine image in the iconic sense, and therefore views the shedding of human blood – both of the righteous and the wicked – as the "diminishment of the Image." With this outlook, had he been in the Sanhedrin "no person would ever have been killed." R. Eliezer, on the other hand, rejects this theosophy, and consequently sees no reason to abolish execution. In his view, judicial execution does not diminish the Divine image and, at least with regard to murder, it diminishes bloodshed.

[33] For extensive discussion of the statements of R. Eleazar b. Azariah and Ben Azzai, see later, Chapter 8.I.

[34] For a broader discussion of this baraita, see later Chapter 8.IV 8.4.

III. IN THE "IMAGE" HIS BLOOD IS SHED

The verse upon which R. Akiva's bases his exegesis, "Whoever sheds the blood of man, by man shall his blood be shed, [for in God's image did He make man]" (Gen 9:1) is at the heart of the covenant concluded between God and Noah after the flood, a covenant which structures the postdiluvian world. According to Moshe Greenberg, this verse encapsulates the basis for Biblical criminal law:

> A precise and adequate formulation of the jural postulate underlying the Biblical law of homicide is found in Genesis 9:6 ff: "For your lifeblood I shall require a reckoning; of every beast shall I require it . . . Whoever sheds the blood of a man, by man shall his blood be shed; for in the image of God was man made." . . . That man was made in the image of God . . . is expressive of the peculiar and supreme worth of man. . . . A beast that kills a man destroys the image of God and must give a reckoning for it. . . . This view of the uniqueness and supremacy of human life has yet another consequence. It places life beyond the reach of other values. The idea that life may be measured in terms of money or other property, and *a fortiori* the idea that persons may be evaluated as equivalences of other persons, is excluded. Compensation of any kind is ruled out. The guilt of the murderer is infinite because the murdered life is invaluable; the kinsmen of the slain man are not competent to say when he has been paid for. An absolute wrong has been committed, a sin against God which is not subject to human discussion. The effect of this view is, to be sure, paradoxical: because human life is invaluable, to take it entails the death penalty.

Greenberg stresses that, in contrast with other conceptions prevalent in the ancient Near East, according to the Bible human life is infinitely valuable. The legal consequence of this conception is that a murderer must be put to death. According to Greenberg, this legislation is not grounded in considerations of deterrence alone, because such considerations might be overridden by other considerations, either economic or utilitarian, as was indeed the case in most ancient law codes. In cases of murder, for example, these codes at times grant discretion to the victim's family to replace capital punishment by monetary compensation.[35] Genesis 9.6 thus gives concrete expression to the concept of the immeasurable value of human life.

Greenberg also notes the paradox that, in order to express the sanctity of human life, the Bible orders that a life be taken. Given that human life cannot be quantified, only the ultimate punishment – death – is commensurate for the crime of one who takes a life.[36] For expiation to be affected, the blood of the killer must be spilled, thereby purging the pollution caused by the act of

[35] "You may not accept a ransom for the life of a murderer who is guilty of a capital crime; he must be put to death," Num 35:31–32.

[36] Greenberg, "Criminal Law," 24–25. This point was made by Von Rad, *Genesis*, 129, 132. It is noteworthy that the term "capital punishment" bears two meanings: punishment by decapitation and the gravest punishment of all. The second meaning expresses the idea that death is the ultimate form of punishment – veritably – the absolute punishment.

murder.[37] We might, however, suggest a more "rational" explanation for this conception. Protecting the infinite value of human life justifies and even necessitates resort to the direst means of deterrence and prevention – capital punishment. The prohibition of pecuniary compensation may be justified because a ransom would reduce the element of deterrence. This suggestion may lessen the aforementioned paradox, but it does not eliminate it altogether. In the final analysis, if human life is sacrosanct, it is difficult to justify taking a life, even that of a murderer.

The roots of R. Akiva's attempt to undermine capital punishment already exist, therefore, in the Bible. The paradox implicit in the Biblical justification for capital punishment in the case of murder – creation in the image of God – contains the seeds for overturning that verse's very legislation. The recognition that one who commits murder "diminishes the Image" leads to the conclusion that "murder," even when conducted by the court, brings about the same effect. Capital punishment is thus a form of negative theurgy. We should note that anchoring capital punishment in the concept of creation in God's image produces an inherent tension, even without assuming that the verse assumes a strong sense of iconic presence. R. Akiva's interpretation of the verse sharpens the paradox to the extent that considerations of deterrence and prevention and the need for blood-expiation cannot prevent the inexorable conclusion regarding the practical, although not theoretical, abolition of capital punishment.

R. Akiva and his colleagues' opposition to capital punishment is not limited to the punishment of the murderer alone. These sages argued that it should also be abolished for all candidates for judicial execution. I mentioned above that, from R. Shimon b. Gamliel's response, "They would have multiplied spillers of blood in Israel" we may infer that the murderer is no exception. This response, and the words of R. Eliezer (from *Midrash Tannaim* and the other sources discussed earlier), which focus exclusively on the murderer's punishment, reinforce the assumption that the notion that bloodshed diminishes the Image extends, consciously and intentionally, to capital punishment for the murderer, and consequently to all forms of judicial execution. These comments support the conclusion that the statements found at the conclusion of *Mishnah Makkot*, Chapter 1 and R. Akiva's homily regarding murder, and the diminishment of God's image are interrelated.

The usual reading of R. Akiva's homily assumes that he interpreted the verse in Genesis 9:6 in its literal sense. The chiastic parallelism in the first part determines that the murderer's punishment ("Whoever sheds man's blood)" is execution ("by man shall his blood be shed"): in other words, the punishment is one of measure for measure. Biblical scholars have noted that the words "by man" have a dual meaning. The first meaning is negative: God himself will not avenge the victim's blood (as he took vengeance in the Flood). The second meaning is that henceforth man is empowered, and therefore responsible, to

[37] See Von Rad, *idem*; Frymer-Kensky, "The Atrahasis," 152; see earlier, *supra* Chapter 5.IV.2.

respond to bloodshed by shedding the murderer's blood.[38] The second part of the verse explains the punishment – "for in the Image of God He created man." According to the accepted interpretation of this homily, here too R. Akiva adheres to the literal sense of the verse. The harming of God as a result of the bloodshed, the diminution or depletion of the image, is inferred indirectly from the reason given for the punishment. In other words, from where is it derived that bloodshed diminishes the image? From the murderer's punishment – execution – which the Torah explains as being a result of his having harmed God's image.[39]

According to this reading, the tension inherent in the verse becomes a real paradox: the "diminishing of the image" is responded to with an additional "diminishing of the image." Why? "For in the Image of God He created man." Furthermore, as noted, R. Akiva opposes capital punishment and, in light of R. Shimon b. Gamliel's response, his opposition extends to the punishment of murderers. Assuming the veracity of the claim that his opposition to the death penalty is anchored in his homily in *Tosefta Yebamot*, then the accepted reading of the verse involves a perplexing contradiction: the ideological basis undermining capital punishment is inferred from the very verse that justifies this punishment.

To avoid these difficulties, an alternative reading may be proposed. According to this reading, R. Akiva alters the sense of the verse being explained. I suggest reading the homily in the following manner. "From whence is it inferred that one who sheds blood diminishes the image? As it is said, 'Whoever sheds man's blood [the victim], within man [i.e., in the image of God], His blood has been shed.' [And from where do we learn this?], 'For in the image of God He created man.'" R. Akiva means to say that the shedding of human blood is tantamount to the shedding of the blood of God, who dwells within humanity. In other words, the victim's blood not only spills from the victim, it also spills from the Image. This explanation was also suggested by David Flusser who wrote: "R. Akiva understood the beginning of Genesis 9:6 as if its meaning was: One who sheds the blood of a human being, is regarded as if he had shed the blood of God, for 'in the image of God He created man.'"[40]

This reading transforms the first part of Genesis 9:6 from a normative prescription (death penalty for murderer) to a theosophic-descriptive postulation

[38] See Von Rad, *Genesis*, 133, who relies on Dilman. The expression "by man" can be interpreted in a couple of different ways: 1) "By way of man," in other words, a punishment to be meted out by the court (Radak) or "by man," meaning through witnesses (Onkelos, Rashi, and Ibn Ezra,); 2) "for the man" whose blood was shed (Ibn Ezra); 3) "by man", in other words, by the murderer, the shedder of blood, the blood shall be shed, implying a talionic punishment. In my view, the last possibility is the simple meaning of Scripture, because the chiastic structure of the verse indicates that it is based on concept of measure for measure (Von Rad, *Genesis*, 132). The ambiguity of the expression "by man" opened the doors to a number of rabbinic homilies.

[39] Smith, "The Image of God," 475.

[40] Flusser, "Love the Creations," 149.

(diminishing of the image). This change eliminates the paradox, for the verse no longer orders the killer's execution, but rather lays the theosophic background for the severe gravity of the act of murder. Through this exegesis the path is cleared for opposition to capital punishment, because this opposition no longer contradicts the meaning of the verse.

A number of considerations support this reading. First of all, the tannaim frequently deviated from the Biblical context when expounding upon Genesis 9:6, even in halakhic matters. *Tanna d'bei Menashe*, for example, provides the following exegesis: "'Whoever sheds the blood of man, within man his blood shall be shed.' Now, how can man's blood be shed, and yet be retained within him? By strangulation" (since strangulation is a form of execution which does not involve the shedding of blood and leaves no mark on the body). R. Judah b. Pazi deduces from this verse that a Noahide may be convicted on the basis of his own confession. An homiletical exegesis ascribed to R. Ishmael concludes from this verse that a Noahide is executed even for the murder of an embryo: "What is R. Ishmael's reason? Because it is written, 'Whoever sheds the blood of man within [another] man, his blood shall be shed.' What man is within another man? An embryo in its mother's womb."[41]

R. Akiva's homily utilizes the phonetic and etymological proximity and similarity of the words *dam–adam–demut* (blood–man–image), merging their meanings into one other. Saul Lieberman noted that the Aramaic word *adam* means "blood."[42] Flusser has also suggested that R. Akiva replaces the word *adam* with the word *demut*, as if to say: Do not read [he who spills the blood of man] *ba-adam* (in a man), but rather read *be-demut* (= in the image) [his blood shall be shed]." The appearance of the word *demut* in this homily is not accidental, for in the supporting verse the word *zelem* appears. It would have been natural for R. Akiva to state, "He diminishes the *zelem*." That he did not do so suggests that he was playing upon the similarity of the three words cited above. This understanding is confirmed by R. Akiva's famous maxim in *Avot*, which expounds the very same verse: "Beloved is Man, for he was created in the Image (*be-zelem*)" – and not *be-demut*. Furthermore, as noted above, the use of the term *demut* in R. Akiva's homily is ambiguous, referring simultaneously to both man and God. This homily is similarly ambiguous with respect to the term "man (*adam*)."[43] It seems that in the homily in *Tosefta Yebamot* the word *demut* replaces the word *adam* in the first part of the verse, and not the word *zelem* in its conclusion. The notion of creation in the image substantiates this substitution.

41 *b. San.* 57b; see also *b. San.* 71b, 51b; *y. Kidd* 1:1/58c; and *Genesis Rabbah* 34.6 (pp. 325–326) (respectively).

42 Lieberman, *Ha-Yerushalmi*, 72, and see Kister, *Avot de-Rabbi Nathan*, 94 n. 75, and references.

43 See *Pesikta de-Rav Kahana*, *Parah Adumah*, 4, I:64; *Genesis Rabbah* 27.1 (p. 255–256) and see ibid., Chapter 6.II.1.

The image of the spilling of God's blood alluded to here is not exceptional in Talmudic literature. Menahem Kister cites a passage from *Avot de-Rabbi Natan* which deals with Titus's acts when entering the Holy of Holies: "And there was an evil person there, Titus . . ., who was brazen enough to enter, and of him it was said 'A wicked man hardens his face' (Prov 21:29). Nor was this all. He took a sword and pierced the curtain and blood began to seep out, and that evil person thought that he had himself killed that One [the Holy One, blessed be He]."[44] In another place in *Avot de-Rabbi Nathan*, the following ambiguous passage appears: "Why were the commandments of menstrual purity given to woman and not to man? Because Adam was the blood of the Holy One, blessed be He. Eve came and spilled it. Consequently, the commandments of menstrual purity were given to her, so that she might be atoned for the blood that she spilled."[45] The words "Adam was the blood of the Holy One blessed be He" may be interpreted in various ways. The phrase may connote that man's blood is God's property and Eve, having spilled it, is punished by being subject to her menstrual cycle.[46] However, these words may also be indicative of a more vital connection between man and God, in which the blood of God flows through human veins, and its spilling is the shedding of God's own blood.

In fact, immediately following this homily in *Avot de-Rabbi Natan*, another one appears: "Adam was the blood of the world, for when she caused it to be spilled, she became obligated to observe the menstrual laws." Similarly in *Yerushalmi Shabbat* (2.6; 5b) we read: "Adam was the blood of the world, for it is written, 'A mist rose up from the earth' (Gen 2:6), and caused Eve to die." From the Yerushalmi it is evident that the expression "Adam was the blood of the world" means that Adam's blood was one of the foundations of the world – in other words, belonging to its substance. This is the meaning, according to this homily, of the verse "and a mist rose up from the earth": the mist is interpreted as the blood. Hence the phrase in the Yerushalmi, "Adam was the blood of the world" elucidates its counterpart in *Avot de-Rabbi Nathan*, and allows us to compare "blood of the world" with "blood of the Holy One blessed be He." The connection between God and man implies that man's blood sustains, so to speak, the body of God. The phrase "Adam was the blood of the Holy One blessed be He" bears a close affinity to the idea of *zelem* as presence, as by way of a mythical image they both merge man with his creator. Furthermore, this homily is of special interest in our context because it identifies the shedding of human blood with the shedding of divine blood.

[44] This paragraph, which is not found in the printed edition of *Avot de-Rabbi Nathan* was added in manuscripts to Version B, 7 (p. 20). See Kister, *Avot de-Rabbi Nathan*, 97. Regarding the word "man" as an epithet for God in rabbinic literature, see Marmorstein, "The Names of God," 65. Regarding the Almighty as an old man living in the Holy of Holies, see *y. Yoma* 5.2 (42b).

[45] *Avot de-Rabbi Nathan*, Version B, 9 (p. 83). This paragraph was discussed earlier in Chapter 5. IV.5.

[46] See earlier, Chapter 5.IV.2.

Let us now return to Rabbi Akiva's well-known statement from *Mishnah Avot*:

He [R. Akiva] also said: Beloved is man, for he was created in the image [of God]; a greater love was bestowed upon him, [that] he was created in the image, for it is written, "In the image of God made He man." (Genesis 9:6)[47]

R. Akiva's innovation was not only that man was created in the Divine image, a fact stated in the Bible itself, but that this was the reason for man's being beloved. R. Akiva goes on to assert that, "A greater love was bestowed upon him." To prove this assertion, he cites the verse "In the image of God He made man." This raises questions on a number of levels. We will begin with the exegetical one: How does man's creation in the Divine image teach us that man is beloved? Second, upon whom is man beloved; who bestows upon him this greater love: God, man or perhaps both?

Before attempting to answer these questions, we need to address a number of linguistic and exegetical issues. The expression "beloved" (*haviv*) in tannaitic language is not confined to affection and love. Rather, it may also connote importance and preference.[48] In R. Akiva's homily, man is unquestionably the object of God's love, as is attested by the homily's continuation: "Beloved are Israel, who are called sons of the Omnipresent (*banim la-makom*)," a statement which indicates God's love and affection for Israel. But one cannot exclude the possibility that *haviv* also denotes importance. The term "a greater love was bestowed upon him" (*hibah yeterah noda'at lo*) is unique in Talmudic literature, and it is somewhat ambiguous. According to Maimonides, Genesis 9:6 refers exclusively to the double phrase, "greater love," focusing upon the words *noda'at lo* (lit. known to him): "He [R. Akiva] said that He (God) informed him that He had bestowed upon him the value of that benefit, being a different manner of benefit. For occasionally a man receives benefit out of mercy for him, and he is not informed of the worth of the benefit, because of contempt for him." Maimonides contends that R. Akiva was forced to find his proof text in Genesis 9:6 as distinct from Genesis 1:26–27 (the first appearance of the idea of creation in the Image), because this verse was spoken directly to man (i.e., to Noah), unlike the earlier verse, which precedes the creation of humanity. According to this conjecture, R. Akiva meant to say, "He was bestowed greater love when he was informed (= *noda'at lo*) that he was created in the Image." Aside from being cumbersome, this interpretation is linguistically problematic, for the word *noda'at* should have been in the masculine.[49] I interpret the word *noda'at*, which I have translated as "bestowed," to connote something which is

[47] *m. Avot*, 3:14 The words "for in the image" are missing in the Kaufmann manuscript, but were added in the margins. They do appear in the Cambridge manuscript, (according to Lowe's edition), and in Parma (de Rossi), 138, and in other manuscripts. Compare *Avot de-Rabbi Nathan*, Version A, 39, p. 118.

[48] For *haviv* (= beloved) in the sense of "importance" see, e.g., *t. Kelim* (*Bava Kamma*) 1.6; *t. Yad* 4:6 (and perhaps also in *m. Avot* 2. 6, 12). And in the sense of "loved" see, e.g., *t. Ber* 7.24; *t. Ned* 4.3.

[49] See Ben-Ami Sarfati, "Greater Love was Bestowed," 37 and references.

knowledge common to all, as stated by R. Shimon b. Tzemah Duran, in his commentary on *Avot*, *Magen Avot*, "Within the creation itself, in its being called into being, this love is evinced, and not in his being informed of the love." This is also indicated by Rashi's formulation "With greater love did He love him, for He created him in His own image."[50]

R. Akiva's homily is based upon a dual emphasis: (a) God created man, and (b) He did so in His image. In R. Akiva's view, creation in the Divine Image attests to God's affection for man, for it is only natural for God to have particular affection for a creature that was created in His own image. This provides an answer to the second question as well: God bestows his greater love on man. Why? Because God loves the creature most similar to him, the one He created in His own image. The core of R. Akiva's dictum is God's love for Himself, and by extension, His love for His prototypes, as a result of which "man is [more] beloved" (*hibah yeterah*) than other creatures. It follows that R. Akiva's observation is as much concerned with God's love for humanity and the reason for that love, as it is with the beloved status of human beings. According to this analysis, not only is man beloved by God; he is, or should be, beloved by his fellow man, for all human beings resemble one another: all of them are made from the same stamp.

Assuming that this interpretation of the words "greater love was bestowed upon him" is correct, we may conclude that R. Akiva cites the second appearance of the notion of *zelem* in Genesis, because it is here that God's special relation with humanity is manifested. In Genesis 9:6 God grants humans special protection by demanding capital punishment for the crime of murder. Contra Maimonides, this verse indicates God's "extra love" for humanity, not because here God speaks to Noah, but rather because this verse, and not the earlier verse in which *zelem* appears, expresses man's preference over the animal, whose blood it is not forbidden to shed. Further support for this interpretation is provided by R. Akiva's opposition to the death penalty, rooted in the paradox of Genesis 9:6 which explains the command to shed the murderer's blood based on the victim having been created in the Image. It will be recalled that R. Akiva inverts the verse's meaning: "annulment of the image" is not the reason for executing the one who sheds blood, but precisely the reason for preventing his execution. Man's status as *zelem Elohim* underlies Akiva's declaration that had he been in the Sanhedrin "no man would ever have been killed." According to R. Akiva's radical exegesis, "love overcomes the usual way": the extra love of Man who was created in the Image saves him from the death penalty even if he committed the most heinous of crimes – "annulling the image."

I began this section with the assertion that the postdiluvian covenant between God and Noah established a new world order. One of the anchors for this new order was that murderers were subject to the death penalty. The death penalty did not exist prior to the Flood. This is evident at several other points in Genesis

[50] *m. Avot*, ibid., *s.v.* "*haviv*".

as well. When Cain claims, "Behold, you have driven me out this day from the face of the earth . . .," God responds "therefore whoever kills Cain, vengeance shall be taken on him sevenfold." God puts on Cain "a mark . . . lest anyone who finds him should kill him" (Gen 4:14–15).[51] Cain, despite being a murderer, is not to be put to death. The same phenomenon appears regarding Lamech, who confesses to his wives: "I have slain a man for wounding me, and a lad for bruising me," but he immediately finds solace, for "If Cain shall be avenged sevenfold, truly Lamech seventy and sevenfold" (Gen 4:23–24). One might surmise that the prohibition against slaying Cain and Lamech was based on the concept of creation in the Image. R. Akiva could thus be portrayed as aspiring to restore the world, at least normatively, to its antediluvian state. This reading confirms and anchors the claim that the roots of R. Akiva's opposition to the death penalty are found in the Scriptural narrative itself.

IV. JUDICIAL EXECUTIONS AND THE (INFORMAL) ABOLITION OF CAPITAL PUNISHMENT

The idea of creation in God's image in the iconic sense is the source of R. Akiva's opposition to the death penalty. However, he did not advocate its formal abolition, which would have directly contradicted the numerous Scriptural prescriptions concerning the death penalty. To save the accused from execution, the rabbis who opposed the death penalty developed a judicial procedure placing numerous obstacles in the way of conviction. The *zelem* conception serves as a guiding principle in whose light R. Akiva and his student-colleagues framed rules pertaining to capital crimes. The fact that the formal abolition of the death penalty would have blatantly contradicted the Torah compelled these Rabbis to deal with the modes of execution, and thus it is not surprising that the same basic concept that informed tannaitic criminal procedure is also manifested in the manner in which the tannaim refashioned the forms of judicial execution.[52]

The *zelem* idea weakens what might appear as a paradox: those same halakhot which contain a well-developed and innovative formulation of the methods of execution also declare that implementation of such punishments should be avoided. The very same thought complex that lies at the heart of tannaitic guidelines to capital punishment also lies at the heart of their reservations regarding their practical implementation. These methods of execution intentionally eschew any disfigurement of the physical-structural expression of the *zelem*, (i.e., of the condemned), and in so doing protect its vitality, which indirectly protects its structure. This thesis holds true for all forms of judicial execution stipulated in the Mishnah; namely: stoning, burning, strangulation, and hanging, but is not applicable to decapitation. It will be recalled that this form of execution is an exception, in that it impairs the integrity of the body. The act of

[51] Compare *Genesis Rabbah* 42.4 (p. 218).

[52] Chapter 6.III.

decapitation – effectively applied to the offence of murder alone – poses a challenge to the *zelem* theosophy for another reason. In the earlier discussion I demonstrated that the tannaim designed this form of execution in light of the Scriptural demand for expiation of the victim's blood by the murderer's blood. One of the key sources for this singular form of execution is the tannaitic exegesis of the verse "Whosoever sheds the blood of man, by man shall his blood be shed."[53] According to the Torah, and the tannaim in its wake, the convict's execution – precisely by shedding his blood – is an essential component in purging the pollution tainting the land occasioned by the act of murder. A waiver of this ritual is tantamount to failing to expurgate the defiling "blood stain." However, as stated above, further on in the Mishnah R. Akiva demurs from the death penalty in general, and specifically from the execution of murderers. Furthermore, his reservation is premised on the rationale that undermines the carrying out of the decapitation and, by extension, the expiation of the "blood that was shed."

These contradictory halakhot derive, as stated, from the same basic concept – creation in God's Image. The *zelem* theosophy establishes a dimension of holiness in human beings; hence, when a human being is harmed, a purifying ritual is necessary. But this very same concept in its iconic sense is also the source of the prohibition of shedding the killer's blood, even at the expense of refraining from the purging of the "stain" left by the act of murder. In the above discussion (Chapter 5, Section IV.3), I refrained from offering an unequivocal answer as to the nature of the tannaitic understanding of the Biblical "blood stain" – whether the tannaim continued to subscribe to the Biblical notion, or whether it had been subjected to changes, and had become more of a symbol, and not an "objective" evil. But, irrespective of the conception ascribed by the tannaim to the "blood stain," in the competition between the thought structure that necessitated the expiation of the victim's blood with the murderer's blood (thus leading to the implementation of decapitation) and the view that blood shed, even by a court, diminishes the Image, it is clear that the latter has the upper hand.

The atonement dimension, so pronounced in execution by decapitation, also functions in the other forms of judicial execution. Peretz Segal demonstrated *how* the modes of judicial execution were fashioned in the model of guilt and sin sacrifices, which are intended to "decontaminate and purify"[54]; we also indicated that some such elements exist in execution by stoning. The non-implementation of judicial executions further undermines the need for atonement and expiation for the sin. In the other forms of judicial execution as well, the *zelem* theosophy undermines the conception that execution is an essential component of atonement. This is highlighted by the fact that, as opposed to those liable for death at the hands of Heaven, which will be briefly discussed in

[53] See also Num 35:31–32; Deut 19:10, 21:4–9; and *Mekhilta de-Rabbi Ishmael, Nezikin*, 4 (p. 262) 6–7, p. 273; and see earlier Chapter 5.IV.2.

[54] Segal, "Liability," 212 ff.

Section VI, the Sages did not provide any substitute forms of atonement for those liable for the death penalty by the *Beit Din* (court).[55] One cannot reject the possibility that their willingness to forego execution may indicate deep changes in the concept of "blood" and in the modes of atonement in tannaitic thinking.[56] In any event, the development and refinement of the *zelem* notion in the iconic sense were the main factors that lead to the abandonment of execution of sinners as a form of atonement, because the price of execution according to this view involves negative theurgy – that is, harming God Himself.

V. FLAGELLATION AS A SUBSTITUTE FOR DEATH AT THE HAND OF HEAVEN

A similar development seems to have occurred in connection with the punishment of *karet* ("excision"). Aharon Shemesh noted the revolutionary exegesis by R. Akiva's colleagues of the passage in Numbers 15:22–31 dealing with *karet*. A literal reading of these verses leads to the conclusion that one who inadvertently transgressed and "did not observe all these commandments which the Lord has spoken to Moses" is atoned by bringing a sin offering. By contrast, regarding the intentional sinner it states: "But the soul that acts presumptuously . . . because he has despised the word of the Lord, and has broken his commandment, that soul shall utterly be cut off (*hikaret tikaret*); his sin shall be upon him" (ibid., 30–31). The intentional sinner thus has no possibility of ritual atonement and his punishment is *karet*, which the rabbis understood as death at the hands of Heaven.[57] Here too, as with judicial execution, the tannaim came to the rescue of the intentional sinner, saving him from death by substituting the punishment of flagellation for the more deadly punishment of karet.[58]

Mishnah Makkot 3:15 reads as follows:

> All who are obligated for karet and have been lashed are exempt from karet, as it says, "Lest your brother be dishonored before your eyes" (Deut 25:3). Once he has been lashed he is your brother; thus R. Hananiah b. Gamliel.[59]

[55] An additional problem is the absence of an alternative system of punishments that addresses societal concerns. From this perspective, R. Akiva and R. Tarfon do not have an answer to R. Shimon b. Gamliel's critique. This point was already made by Greenberg, "Criminal Law."

[56] See Zohar, "Ancient Rituals"; Zohar, "Animals," and see earlier Chapter 4.II.3.

[57] *Sifre Numbers* 112 (p. 121).

[58] In the Bible, flagellation is intended for offences that disrupt the social order (see Deut 25:1, "When there is a dispute between men"). Through their exegesis, the rabbis transformed flagellation into a punishment for religious offences, as stated by Nahmanides (*Commentary on the Torah*, ibid.), "We have a tradition from our Rabbis that flagellation is for transgression of negative commandments, what interest does he have in a dispute between two men". See *Midrash Tannaim*, 25.1 (p. 162); and the discussions of Shemesh in "Punishment of Flagellation," Chapters 1–2

[59] See also *b. Mak* 23b. According to some views, the difference between R. Akiva and R. Hanania relates to the requirement of repentance as an essential condition for atonement. Nevertheless,

A similar position is ascribed to R. Akiva in *Bavli Makkot*:

R. Akiva says: Those who are liable to karet are subject to the sanction of forty lashes, such that if they should repent (before God) the Divine court would pardon them. Those who have become liable to death by a [human] court are not subject to the punishment of forty lashes, so that [even] if they should repent, the earthly tribunal does not pardon them.

Both of these sources attest to an exegesis that compels the Divine Court to exonerate the (intentional) sinner who was flogged and to exempt him from death. R. Hanina stresses that this indeed is the purpose of the lashes, and R. Akiva supplements it with a requirement to repent. Both homiletic interpretations share the same goal. Although R. Akiva demonstrated elsewhere opposition to the death penalty, he also takes the view that the Divine Court does not forgive those liable for judicial execution who repented (and were flogged) because, unlike those culpable for *karet*, their death serves as their atonement.[60] Although R. Akiva opposed the actual practice of capital punishment, he did not provide a substitute form of atonement for those liable for it. There is no escaping the conclusion that, notwithstanding the importance of atonement and repentance, R. Akiva's cardinal concern was in preventing capital punishment. This was extended to death at the hands of heaven in that R. Akiva, as it were, forced the Divine Court to accept lashes as a substitute.[61]

A similar tradition appears in *Bavli Shevuot* in a statement by R. Yohanan, who cites a tradition in the name of R. Shimon b. Yohai: "The verse says: 'For the Lord will not cleanse one who takes His name in vain.' The Divine court will not cleanse him, but the human court lashes him and thereby cleanses him."[62] This statement draws no distinction between the principle of cleansing from sin and that of exemption from *karet*. Clearly, lashes are substituted for *karet* in order to escape the punishment of death, and atonement is merely a tool for its effectuation.[63] This notion is echoed in *Numbers Rabbah*, where the concept of forcing the Divine court is somewhat moderated:

When the Holy One blessed be He defined for Moses the thirty-six transgressions mentioned in the Torah that are punishable by *karet*, Moses said to the Holy One blessed be He: "Master of the Universe! If men commit any one of these sins shall they be so punished?" So the Holy One blessed be He, said to him: "Let them receive forty stripes and escape the penalty of *karet*." And this is what it teaches: "All who are subject to *karet* but have been lashed are exempt from *karet*, as it says, 'Lest your brother be demeaned in

all agree that flagellation combined with repentance exempts a person from death by the hand of Heaven.

60 *b. Mak* 13b.

61 See *Sifre Deuteronomy* ibid., "All those who die (by the Human Court) receive atonement." See parallel texts and *m. San* 6:2.

62 *b. Shev* 21a.

63 Compare Shemesh, "Punishment of Flagellation," Chapter 9 (esp. 236), who tends to emphasize the element of atonement, and not the saving from death.

your eyes' (Deut 25:3) – once he has been lashed he is your brother. Thus R. Hananiah b. Gamliel."[64]

According to R. Hananiah, flagellation, more than it is intended as a form of purification for an offence that initially, according to the Torah, has no atonement serves to prevent the sinner from dying. R. Hananiah does not mention the element of atonement. According to this midrash, the change in Biblical law came about after Moses' complaint to God, and according to God's own command.

The refashioning of judicial executions, the opposition to capital punishment, and the substitution of flogging for *karet* are all clearly connected. All attest to an effort to avoid the maiming of a human being and, primarily, causing his death. In my view, they are all sustained and nurtured by the idea of man's creation in the Divine Image in its iconic sense, teaching that bloodshed "diminishes the Image." According to this theosophy, capital punishment embodies a negative theurgy, irrespective of whether administered by the human court (capital punishment) or the Divine Court (*karet*). Just as the grounds for the revision of judicial executions and the avoidance of their implementation is premised on "Divine need" – that is, preventing harm to God, who inheres in his image – so too with the substitution of flogging for *karet*. Since the nature of this exegetical/legislative process is "an act for the sake of Heaven,"[65] it assists God, as it were, to avoid maiming Himself, and the Rabbis seem certain that the Divine court sanctions their decision. Indeed, it is God Himself who responds to Moses that "they would receive forty lashes and be exempt from their *karet*."

It is not incidental that R. Hananiah b. Gamliel, who stated, "All who are subject to *karet* but have been lashed are exempt from *karet*," followed the same exegetical path as R. Akiva, who stated that one who sheds blood diminishes the image of the King.[66] It will be recalled that the affinity between death at human hands and death at the Divine hand is embodied in the principle enunciated by R. Judah the Prince regarding judicial executions: just as death at the Divine hand leaves no mark, so too death by human hand leaves no mark. We further asserted that this is related to the idea of creation in the Image.[67] Just as the tannaim described God as avoiding harming himself when administering Divine execution and they emulated this method in judicial execution, they similarly described God as "consenting" to the exemption from *karet* for those who are flogged and those liable for capital punishment from execution.

The literary structure of the mishnaic tractates of *Sanhedrin* and *Makkot* supports this reading. As is well known, these tractates originally formed a single

[64] *Num. Rabbah* 5.4 (p. 147).
[65] See earlier, Chapter 6.III.3.
[66] *Mekhilta de-Rabbi Ishmael*, *ba-hodesh*, 262; and see idem 264 "R. Hananiah son of Gamliel."
[67] See earlier, Chapter 6.III.2.

tractate.[68] From Chapter 4 of *Sanhedrin* through the end of *Makkot*, *Mishnah Sanhedrin-Makkot* deals with "capital laws" (*dinei nefashot*). Chapter 4 deals with the examination and investigation of witnesses – that is, the procedures for criminal-capital trials. Chapter 5 deals with the procedure for execution, and Chapter 6 with the four forms of execution. The remainder of *Mishnah Sanhedrin* uses these four modes of execution as a framework for classification of the various capital offences. The first two chapters of *Makkot* deals further with laws related to capital punishment, while the final chapter deals with flagellation, which is essentially the punishment for those liable for *karet* (death by Divine hand), which thus falls under the rubric of capital jurisdiction.[69]

The basic intention of tractate *Sanhedrin-Makkot* is therefore to save the criminal from capital punishment. At a number of central junctions the mishnaic editor interspersed aggadic dicta that express this idea. For example, in Chapter 1 the midrash stipulating the composition of the court in capital matters implies that the role of the court of 23 is to save the accused – "and an *edah* (community) that saves." Toward the end of Chapter 4, in discussing the admonition given to witnesses in capital cases, the Mishnah famously states that the loss of one soul is equivalent to the loss of the whole world and that all of humanity is created in the imprint of the first man – in other words, bearing the Divine imprint. As we shall observe below, a cluster of homilies appearing there all bear the seal of the *zelem Elohim* theosophy.[70] At the end of the execution process described in Chapter 5, in connection with the procedure of hanging, the mishnaic editor places the statement of R. Meir, "I am pained ...," which expresses the pain and degradation shared by God and the hanging convict, and alludes to his fundamental opposition to capital punishment. At the end of Chapter 1 of *Makkot* the editors cite the words of R. Akiva and R. Tarfon: "Were we members of the Sanhedrin, no person would ever have been executed." The concluding section of *Makkot* deals, as stated, with persons liable for death at the hands of Heaven. This section likewise terminates with an aggadic passage expressing the notion that lashing exempts those liable for *karet* from receiving their punishment from God. The conclusion is clear: the *zelem* theosophy is the constitutive model for the entire corpus of *dinei nefashot* – in other words, for all of *Mishnah Sanhedrin-Makkot*.

VI. "AN EYE FOR AN EYE" – PECUNIARY COMPENSATION

In concluding this Chapter, I will offer some brief observations on another subject, which may reflect a similar application of the iconic conception of Imago Dei. *Mekhilta de-Rabbi Ishmael* records the following homily:

[68] See Epstein, *MLST*, 417.
[69] See earlier, Chapter 5.I. n. 4.
[70] See earlier, Chapter 8.I.

"An eye for an eye": [This means] monetary compensation. You will say that this means monetary compensation, or does it perhaps mean an eye, literally? R. Ishmael used to say: Behold, it says: "One who kills a beast shall make restitution for it; but one who kills a man shall be put to death" (Lev 24:21): The verse compares cases of injuries inflicted upon men to those of injury inflicted upon beasts, and cases of injuries inflicted upon beasts to cases of injury inflicted upon men. Just as cases of injury inflicted upon beasts have monetary compensation, so too do cases of injury inflicted upon men have monetary compensation. R. Isaac says: Behold it says: "If there be laid on him a ransom," (Exod 21:30). Now by using the method of inference *ad minori ad majus* you reason thus: If in a case where the verse punishes with a death penalty, it only punishes with monetary compensation, here, where it does not punish with a death penalty, it is surely logical that it punishes with nothing more than monetary compensation.[71]

This homily engenders a significant transformation in the punishment of the person who maims another, regarding whom the Torah prescribes, "If anyone maims his fellow, as he has done so shall it be done to him: fracture for fracture, eye for eye, tooth for tooth; the injury he inflicted shall be inflicted upon him" (Lev 24:19–20).[72] Tannaitic exegesis replaces the Biblical talionic principle with monetary compensation.

The tannaitic attitude to capital punishment and their reform of the forms of judicial execution is clearly related to their transformation of personal injury law in the *Mekhilta*. Here too the issues are related to the common underlying theme of *zelem*. If the tannaitic avoidance of harming a corpse is anchored in the prevention of any affront to the Divine Image, *a fortiori* that they would be equally concerned to prevent any possible damage to the body while the person is still alive. However, I do not know of any sources which explicitly connect the notion of *zelem* with the tannaitic denial of the Biblical talion.[73]

Apart from the phenomenological claim made above, support for this can also be adduced from the Biblical text, which forges a tight link between a murderer and one who causes injury. In the sequel to the verses concerning one who strikes a pregnant woman, Exodus 21:23–24 states "But if other damage ensues, the penalty shall be life for life, eye for eye," etc. A similar juxtaposition is found in Leviticus 24:17–18, the verses which serve as the basis for R. Ishmael's homily in the above-cited *Mekhilta*. Just as the death penalty is imposed upon the murderer as mandatory punishment for having harmed God's image, so too, cutting off the limb of one who maims another human being expresses the gravity ascribed by the Torah to the mutilation of the Divine image. The tannaim were no doubt aware of this affinity, and presumably the conceptual model underlying their reservations regarding the implementation of capital

[71] *Mekhilta de-Rabbi Ishmael, Nezikin*, 8 (67– 68); and *m. Bava Kam.* 8.1; *b. Bava Kam.* 83a–84a.

[72] Exod 21:23–26.

[73] The derashot of R Ishmael and R. Yitzhak in the passage from the *Mekhilta* are essentially technical, intended to show that pecuniary damage does not contradict the language of Scripture. However, they do not provide the reason for the change. A similar tendency is found in the passages in the *Bavli Bava Kamma*, ibid.

punishment also underlie their substitution of the *lex talionis* principle by pecuniary compensation. The physical-structural conception of *zelem Elohim* underlies the avoidance of blemish to the assailant's body in the same way as preservation of the body imbues the procedure governing judicial executions.

Here too R. Eliezer adopts an opposing position: "It was taught: R. Eliezer says: 'An eye for an eye' – literally."[74] As usual, R. Eliezer's view reflects what is referred to by scholars as "an ancient halakhah," which is closer to the literal sense of the Torah.[75] Nonetheless, his view here, like his view regarding capital punishment (and the rules attributed to him in the context of judicial executions), may conceivably reflect his rejection of the Hillelic *zelem* theosophy and their application to the laws of personal injury.

As stated earlier, I found no explicit source to anchor the transformation of the talionic principle as an outgrowth of the *zelem* principle. However, a certain trace of evidence may be found in the words of the amora R. Yohanan, who explains the rule pertaining to the person who slaps another person, which is a form of assault:

> He who slaps an Israelite on the jaw is as though he had thus assaulted the Shekhinah, for it is written, "It is a snare to the man who devours that which is holy." (Prov 20:25)[76]

It is difficult to determine when the opposition to capital punishment first arose in Rabbinic tradition. Josephus relates that the Pharisees tended toward leniency in punishment, and especially in ruling on capital punishment, whereas the Sadducees adopted the opposite approach.[77] The Mishnah attributes the meticulous investigation of witnesses to R. Yohanan b. Zakkai (m. Sanhedrin 5.2), but it is unclear if his approach is based on a principled rejection of capital punishment, derived from a reasoned, organized conceptual grounding, or whether he was simply wary of a mistaken conviction.[78]

This vagueness and obscurity dissipates when we turn to the dicta ascribed to R. Akiva and his colleagues. Their rejection of capital punishment is unequivocal and its rationale clear: the iconic conception of Imago Dei. In their view, any act of murder – including the death penalty prescribed by the court – has the effect of "diminishing the image," and must therefore be avoided. Assuming we accept the accuracy of the traditions that ascribe the *zelem* theosophy to Hillel, it may reasonably be presumed that he too was opposed to capital punishment. Under this assumption, R. Akiva and his colleagues continued a halakhic tradition that they received from the Pharisees and, more precisely, from the School of Hillel. However, in the absence of explicit primary sources to substantiate this theory, it

74 *b. Bava Kam.* 84a.

75 R Eliezer's opinion is also found in the *Mekhilta* passage (ibid.). See Geiger, *Articles*, 88, who attributes this position to the Boethusians and the Karaites; See Gilat, *Rabbi Eliezer*, 38, n. 11.

76 *b. San* 58b. On the act of slapping as a form of assault, see *m. Bava Kam.* 8.6.

77 *Ant* XIII, 294; 20. 199; See Sanders, *Judaism*, 419–420.

78 See *m. Avot* 1.9; *Avot de-Rabbi Nathan*, Version A, 20 (p. 43), and Version B, 20 (p. 42).

is safer to date this development to the post-Destruction period. It is also likely that this theosophy and its halakhic ramifications evolved gradually, beginning with Hillel and his school and reaching its complete formulation a few generations later.

This dating is substantiated by our dating of the refashioning of the rules governing judicial execution. My claim above was that they too were formulated in a manner commensurate with the concept of creation in the Divine Image. These laws were, at the very earliest, a tannaitic innovation dating from the generation after the Destruction. Opposition to the death penalty fits into this same exegetical/legal context. Imago Dei finds partial expression in the forms of execution, premised on the preservation of the body which is an icon of God, and is found more fully in the tannaitic avoidance of the practical implementation of capital punishment. These processes are not mutually exclusive, for the tannaim undermined capital punishment without formally abolishing it. It may reasonably be presumed that the details of criminal procedure in rabbinic sources were thus formulated as a single, integrated unit.

Additional support for this claim was found in the extreme impracticality of the tannaitic criminal procedure and its obliviousness to societal necessities. This phenomenon has perturbed many scholars, and may be more easily understood if the entire complex of laws is viewed as a theoretical, academic enterprise emerging from the world of the *Beit Midrash*, the rabbinic academy, and not as an institution confronting the needs and exigencies of real life. The idealized criminal procedure presented by the Mishnah and in other tannaitic sources crystallized at a time when the Rabbis no longer had capital jurisdiction, in the aftermath of the Destruction of the Temple.[79]

To the best of my knowledge, opposition to capital punishment in late Antiquity is unique to tannaitic law and thought. Philo's writings express no reservations regarding capital punishment. In fact, there are certain punishments which he describes as overly lenient:

> Since men of wicked dispositions are never wearied of offending, but are always committing atrocious actions in the excess of their wickedness, and increasing their iniquities, and extending them beyond all bounds or limits. For the lawgiver would, if it had been in his power, have condemned those men to ten thousand deaths.[80]

Further on, Philo's formulations are toned down, but his support for capital punishment remains clear. Josephus's views on this topic are derived directly

[79] The prevalent view among modern scholars is that following the destruction of the Temple in 70 CE, the Romans abrogated Jewish capital jurisdiction. Opinions are divided regarding the authenticity of the Babylonian tradition (*b. Shab* 15a) that the four modes of judicial execution ceased being operative 40 years before the destruction, this tradition itself conflicting with that recorded in *Mekhilta de-Rashbi, Mishpatim*, 17.9 (102. *b. Sota* 8b; *b. Ket* 31a; *b. San* 52a; ibid., 36b; *b. Avodah Zarah* 8b; but cf. *b. Meg* 12b.

[80] *Laws*, 3, 150–152 (vol. 7, p. 571.) The context of these comments is the punishment of the murderer, who in Philo's opinion was hung after his execution. See earlier, Chapter 5.VI.6.

from the Bible, which frequently imposes the death penalty.[81] The New Testament likewise expresses no reservations regarding capital punishment, and such is also the position found in the Dead Sea Scrolls.[82] While some Christian authors, such as Augustine and Ambrose (who postdate the tannaim) recommended leniency in punishing heretics, they did not demand the outright abolition of capital punishment.[83] Even among the tannaim themselves the attitude towards capital punishment was not uniform: R. Eliezer and R. Shimon b. Gamliel contend that capital punishment is an important, efficient societal tool, which cannot be dispensed with.

Roman law from that period had no reservation regarding capital punishment. In fact, scholars have shown that in the transition from the Republic to the Empire, there was a substantial harshening of the methods of punishment. There was a gradual increase in the number of offences punishable by death, and the modes of punishment became progressively crueler.[84]

Just as opposition to the death penalty was exclusive to tannaitic law, so too was their notion of creation in God's image. This concept, which includes an anthropomorphic theology, a concrete anthropology, and an iconic concept of representation, was alien to both the Jewish and non-Jewish authors mentioned above. Josephus makes no mention thereof[85] and, needless to say, it was totally foreign to the Stoics[86] and to Roman legislators. To the best of my knowledge, the idea is absent from the Dead Sea Scrolls. As we observed, the (iconic) conception of Imago Dei was opposed by R. Eliezer, who in this context apparently continued the Shammaitic tradition. Both Philo and the Church Fathers explained it in light of other theologies and anthropologies.[87] Paul located the *zelem* in Jesus, and to a certain extent in his followers, whom he

[81] See earlier, Chapter 5.VI.6.

[82] The *Temple Scroll* apparently contains a directive to hang people while still alive. See earlier, Chapter 5.III. However, in the criminal trials unique to this sect, there is no explicit reference to capital punishment. The gravest punishment found there is expulsion from the sect (see Schiffman, *Halakhah* Chapter 7). In my view, the sect believed that expulsion bears an affinity to the punishment of *karet*. However, this did not derive from any type of opposition to capital punishment.

[83] Augustine stresses the importance of admission and confession on the part of the accused, and even recommends torture in order to obtain them (compare *m. San* 7.2). He felt that harsh punishment for purposes of revenge was prohibited, although it might assist in the repentance process. Ambrose recommends capital punishment, as a means to expunge the insanity of the sin. For sources and literature, see Garnsey, "Harshened Penal Laws," 156.

[84] Garnsey, "Harshened Penal Laws"; see also S. Lieberman, "Institutions," which deals with a slightly later period.

[85] In his description of the creation of the world in *Ant* 1. 32–36, no mention is made of creation in the Image. The same applies to the description of creation in *Jubilees* (Chapter 2, and see esp. verse 7). On creation in the Image in *Jubilees*, see Chapter 9.IV.

[86] A distinction must be made between the Stoic *dignitas*, and the Biblical concept of Imago Dei, and especially in its tannaitic rendition. The first contains no theosophic element, and lacks a theurgic dimension.

[87] Regarding Philo, see Wolfson, *Philo*, 117, 154, 199; Altmann, "Imago Dei," 15.

portrayed as his "limbs." The fact that *zelem* theosophy is unique to tannaitic tradition goes hand in hand, therefore, with the fact that the opposition to capital punishment was also unique to the Sages.

My thesis is that the reforms espoused by R. Akiva and his colleagues in the realm of criminal punishment and their explicit opposition to capital punishment, cannot be premised exclusively on moral or humanistic grounds. Their halakhic exegesis is rooted in a radical theosophy wherein the Deity is present in mankind, which He created in His image. This metaphysical theosophy has practical implications, as discussed at length in the previous chapters. Ethics comprises but one aspect of this theosophy. In the words of Clifford Geertz: "Never really metaphysics, religion is never merely ethics either. The source of its moral vitality is conceived to lie in the fidelity with which it expresses the fundamental nature of reality."[88] The tannaitic ethos as reflected in the halakhot discussed in these chapters is plausible, given that the world view illuminating it is the idea of creation in the Image, in the iconic sense.

In the course of our comments thus far, we have discussed those halakhot that derive from the idea of creation in the Image, most of which have a preventative theurgic dimension. In the following chapter we will deal with those halakhot that are intended to strengthen, magnify and augment the divine image. The flip side of the prohibition on execution is the positive precept of giving birth, and they are mentioned together quite often. The prohibition of murder and the commandment to procreate form the foundation stone, a sort of preliminary mitzvah for a plethora of other laws, and to a significant extent, for the tannaitic halakhic system in its entirety.

[88] Geertz, *Interpretation*, 123–124.

8

Procreation: "An Eternal Building"

The iconic sense attributed by the tannaim to the concept of *zelem Elohim* is not limited to those halakhot whose purpose is to protect the Divine image that inheres within the human being. The *zelem* theosophy also underlies the commandment of procreation. If the prohibition of bloodshed (and by extension on the implementation of the death penalty) are purported to prevent the diminishment or annulment of the Divine image, then the commandment to procreate was intended to reproduce prototypes of God. In fact, human procreation, more than it mitigates the "diminishment of the Image" caused naturally by death, intensifies and expands the Divine presence. The positive commandment to procreate is essentially theurgic. Moreover, in contrast to the halakhot discussed thus far, including judicial executions, capital punishment, and the laws pertaining to the assailant, it is not "preventative theurgy." Borrowing Idel's terminology, the reproductive act is essentially a "theurgy of augmentation."[1] The commandment of procreation reveals the ideological foundation of the tannaitic conception of Imago Dei: by creating humanity, God essentially extended his own presence. This intention was not limited to a one-time act. God is forever expanding himself by virtue of the reproductive system that He created in order to replicate His image: "he made him in the likeness of God; male and female he created them" (Gen 5:1–2). God guaranteed the perpetuation of His image by the blessing He bestowed upon mankind, "Be fruitful and multiply," which the Rabbis translated into a normative imperative, a mitsvah. The theosophic-theurgic ramifications ascribed by the Rabbis to the concept of *zelem Elohim* explain the centrality of the commandment of procreation in the tannaitic world view, to the extent that one of the Rabbis even referred to it as "a great principle of the Torah."

The first part of the following discussion deals with various homilies, primarily tannaitic, which establish both an explicit and implicit link between the *zelem* conception and procreation. I then discuss a liturgical text, "the Nuptial

[1] Idel, *Kabbalah*, 157, 180; Idel, "Sexual Metaphors," 203; Wolfson, *Circle*, 93.

Blessings" (*Birkat Hatanim*). In the first three blessings in this text the concept of *zelem* is combined with the mitzvah of procreation, thereby conferring theurgic dimensions upon reproduction. In the final section, I discuss a number of tannaitic rules pertaining to the duty to procreate, attempting to demonstrate that they are based on the tannaitic conception of creation in the Image.

I. "WHOEVER DOES NOT ENGAGE IN PROCREATION ANNULS THE IMAGE"

R. Akiva says: One who sheds blood, he annuls the Image [*demut*], as it says 'Whoever sheds the blood of man, by man shall his blood be shed [for in the image of God did He make man].' (Gen 9:6)

R. Eleazar b. Azariah says: One who does not engage in procreation annuls the Image, as it says, "For in the image of God did He make man" and it is written, "And you, be fruitful and multiply" . . .

Ben Azzai says: One who does not engage in procreation, he sheds blood *and* annuls the Image, as it says, "For in the image of God did He make man" and it is written "And you, be fruitful and multiply" . . .

R. Eleazar b. Azariah said to him: Teachings are becoming when they are uttered by those who practice them. Some preach well and do not act well, others act well but do not preach well; you however, preach well but do not act well!

Ben Azzai replied: What can I do, my soul is in love with the Torah; the world can be sustained by others.[2]

Earlier, I analyzed R. Akiva's statements at some length,[3] showing that according to the tanna, harming a human being created in God's image is tantamount to harming God Himself, who inheres in His image. R. Eleazar b. Azariah adds his own gloss to R. Akiva's statement: not only bloodshed, but also avoidance of procreation annuls the image. His proof is found in the words "and you, be fruitful and multiply," which immediately follow upon "for in the image of God did He make man." The subject of *zelem* pertains, not only to the prohibition of bloodshed that precedes it, but also to the blessing or imperative of "be fruitful and multiply"[4] which follows. Just as bloodshed "diminishes" God, so too does refraining from procreation. Ben Azzai takes this notion even further, stating that avoidance of procreation is essentially the same as bloodshed, and thus of equal severity. These are two sides of the same coin: the former diminishes the image of God, and the latter avoids the obligation of expanding it.

[2] *t. Yeb* 8:7. According to the version suggested by Lieberman, *Tosefta Kipeshuta, Yebamot*, p. 75. Compare *Tosefta Yebamot* (ed. Lieberman), 26; *b. Yeb* 63b; and *Genesis Rabbah* 34.7. For a discussion of the various versions, see *Genesis Rabbah*, p. 326, n. 2.

[3] See earlier, Chapter 6.II.1 and Chapter 7.III.

[4] Regarding the meaning of, "And you shall be fruitful and multiply" (Gen 9:1), and its various interpretations, whether as a blessing or a command, see Cohen, *Be Fertile and Increase*, 124–125.

Formulating the statements of R. Eleazar b. Azariah and Ben Azzai in positive terms, we can state that the birth of children sustains and expands the Divine image. The Image is sustained by the act of procreation, because it vanquishes death, which quite naturally causes God's depletion. It "expands" because God is not satisfied with the status quo; He yearns to extend His presence toward a multitude of images. In the earlier discussion, I elaborated on the iconic meaning of *demut* – likeness, which infuses the entire paragraph.[5] The conception of "image" as presence enabled the tannaim to describe the act of human procreation as theurgic, intended to augment God by increasing his images in the mundane realm.

Ben Azzai's statements are followed by a verbal exchange with R. Eleazar b. Azariah. R. Eleazar's censure of Ben-Azzai is not merely of the latter's bachelorhood and his failure to father children, but of his hypocrisy.[6] His praise is suffused with irony, as if to say: "You, Ben Azzai, who pointed out the theurgic dimension of the act of procreation, yourself refrain from the expansion and sustenance of God!" Ben-Azzai's answer reveals the paradoxical nature of his dilemma: his intense study of the Torah produced his theosophical understanding that the act of procreation "expands" God – yet that same intensity of study simultaneously prevents him from implementing the conclusions of his study in the concrete world, for to do so would reduce the intensity of his contemplative life style. Ben-Azzai confronts a tragic tension between the intellectual ideal, the study of Torah, and the practical-theurgic ideal which is the result of these inquiries and contemplation. Unable to engage in both, he chooses a path that contravenes the conclusion of his own teaching – the life of contemplation. The impression evoked by Ben Azzai's comments is that he (i.e., the author of the homily) did not intend to determine a norm, but rather to express his own personal dilemma and his own personal decision.

The connection between the prohibition of bloodshed and its positive counterpoint, procreation, may be alluded to in the following well-known statement: "For this reason was man created alone in the world, to teach that whoever destroys a single soul is reckoned as if he destroyed an entire world. And whoever sustains a single soul is reckoned as if he had sustained an entire world."[7] This teaching appears in *Mishnah Sanhedrin* 4.5 as part of the admonition administered to witnesses in capital cases.[8] The central role of the witnesses in a capital proceeding created a special need to deter them from perjury. The aggadic dicta included in this admonition were originally independent statements, carefully selected by the Mishnaic redactor to give expression to a

[5] See earlier, Chapter 6.II.1–2 and Chapter 7.II.

[6] See *y. Sot* 1.2 (16c); cf. *b. Ket* 63a, which tells the story of Ben Azzai's marriage to R. Akiva's daughter. This apparent contradiction is resolved in *b. Sot* 4b, which explains that Ben Azzai "married and separated" (see Lieberman, *Tosefta Kipeshuta*, *Yebamot*, 1290).

[7] According to the Kaufmann manuscript, *kilu* = *ke'ilu*. For the different versions of this passage, see Urbach, "He Who Sustains." Urbach demonstrates that the words "[one soul] of Israel" that appear in a number of manuscripts was not originally a part of the Mishnah.

[8] Regarding this Mishnah, see Epstein, *MLST*, 56, who observes that this is an early Mishnah, hinted at in *m. Sot* 1.4.

comprehensive and complex conception. Presumably, more than establishing a set formula for the witnesses' admonition, it was intended to voice his view of man's intrinsic worth, even that of a man suspected of a crime punishable by death.

The central claim here is that taking the life of one person is, in a way, tantamount to destroying his potential for procreation. The comparison of the singularity of Adam with the multitude of human beings that were created from him magnifies the gravity attached to the killing of any person, for he too may be the progenitor of "an entire world" (*'olam male*).[9] The deterrent effect of the statement is rooted in its quantification of the results of the act. Perjuring witnesses cause the death, not only of the wrongly accused, but of an unlimited number of potential descendants. A similar idea is expressed in another teaching which appears at the beginning of the admonishment to the witnesses:

> You should know that capital cases are not like civil cases: In civil cases, one can make monetary restitution and thereby effect his atonement, but in capital cases he is held responsible for the [executed convict's] blood and for the blood of his descendants until the last generation (*sof kol ha-'olam*). For thus we find in the case of Cain [who killed his brother]; as it says, "The bloods of your brother cry to me from the ground" (Gen 4:10); it does not say "the blood of your brother" (*dam ahikha*), but "the bloods (*demei*) of your brother" – his blood and the blood of his [potential] descendants.[10]

Both of the teachings in *Mishnah Sanhedrin* shift the focus from the individual (the accused) to his innate procreative potential. They pinpoint the value of the human being not in the "blood" or in the "single soul" of the individual, but rather in the blood of his "descendants" and thus of the "entire world" that may stem from him. It seems that the evaluation of mankind in terms of its procreative capacity derives from the conception articulated in *Tosefta Yebamot* and in other sources (see below) which establish the connection between procreation and increasing the Divine image.

The mishnaic editor was apparently aware that these statements can potentially undermine the value of the individual *per se*. The admonishments to the witnesses are therefore supplemented by the additional observation that:

> Therefore man was created alone . . . to proclaim the greatness of the Holy One, blessed be He. For when a man stamps (*tove'a*) many coins from one stamp (*hotam*), they all resemble one another; but the King of Kings, the Holy One blessed be He, stamped every man in the stamp of (*hotamo*) the first man (*adam ha-rishon*), yet not one of them resembles his fellow. Therefore every single person is obliged to say: The world was created for my sake.[11]

If we previously thought that the intrinsic value of each individual is lost in the anonymity of the "entire world," this maxim corrects that impression by

[9] Rashi, *b. San* 36a. *s.v. lefikhakh*.
[10] The section in parentheses was accidentally omitted in the Kaufmann manuscript due to a homoeoteleuton.
[11] *m. San* 4:13 (in the Kaufmann MS).

stressing individual uniqueness. Underlying this statement is, once again, the concept of Imago Dei: "the stamp of the first man" is none other than the Image of God. This expression is probably based on Genesis 5:3, which relates that Adam begat Seth "in his own likeness, after his image" – in other words in the image of God embedded in him.[12] Even though all men are created in the image of God, none of them resemble (in the sense of being identical to) each other. The author here alludes not only to God's wondrous creative capacity, but also to the infinite variety encapsulated in His image. The statement expresses the complexity of the *zelem Elohim* theosophy. The iconic conception, the ideas of likeness and presence, is not based upon the identity of all of the images created from one prototype, but rather upon their isomorphic similarity, which leaves room for the uniqueness of each particular image.

It should be noted that certain elements of the witnesses' admonition tend to undermine the implementation of capital punishment, for how can one justify the execution (if only in potential) of "the blood of all of his offspring" and of "an entire world?" It is unclear if this implication was intentional, but it is difficult to ignore its relevance to their reservations regarding capital punishment.[13]

Returning to the link between Imago Dei and the laws of procreation, in another homily of R. Akiva the act of reproduction is linked to increasing the Divine Image and Likeness:

"[And she said: I have acquired a male child] with (*et*) the Lord" (Gen 4:1). What shall one do with [i.e., how shall one interpret] the *et* written here? ... Rather, "*et* the Lord" [teaches] that in the past Adam was created from the ground, and Eve from Adam; but henceforth it shall be "In our image, after our likeness" (Gen 1:26) – neither man without woman, nor woman without man, nor both of them without the *Shekhinah*.[14]

As I demonstrated previously, according to this homily humankind's creation in God's image was not a unique, one-time occurrence. Rather, the procreative mechanism ensures the multiplication of images of God, which manifest and increase God's presence.[15] The homily does not distinguish between *zelem* in the sense of image and *Shekhinah* in the sense of presence. On the contrary, they are identified, because the "participation" of the *Shekhinah* in the creation of an offspring – that is, its inhering therein – is in fact an interpretation of "in our Image, after our Likeness." The form of the newborn, conferred on him by his father and mother[16] (the newborn's "proximate cause") is the form of God

[12] In a number of rabbinic sources procreation is depicted as making an imprint of God, similar to the impression of the king's image on a coin. See, e.g., the statement of Resh Lakish in *b. Avodah Zarah* 54a.

[13] As expressed by R. Meir (*m. San* 7.5), R. Tarfon and R. Akiva (*m. Mak*. end of Chapter 1).

[14] *Genesis Rabbah* 22.2 (p. 181).

[15] See earlier, Chapter 6.II.6.

[16] This statement alludes to the notion that woman too is created in the Divine Image, a notion found in the Bible as well. I am not aware of any Talmudic source that explicitly states that woman was not created in the Divine Image. Cf. Paul in II Cor 11: 2–16. One source that may allude to this

(his "remote cause"), which attracts the Divine Presence. The formulation, "neither man without woman, nor woman without man, nor both of them without the *Shekhinah*" implies that one of the purposes of humankind's creation "in our Image after our Likeness" was the drawing of the Divine Presence to its images. This homily is also connected to the following baraita in *Bavli Yebamot*:

Others say: [One who does not engage in procreation] causes the *Shekhinah* to depart from Israel, as it is said, "To be for you a God, and for your descendents after you" (Gen 17:7): when there are "descendents after you" then the Shekhinah dwells [among them], but when there are no "descendents after you," among whom does it dwell? Among the trees or the stones?[17]

A powerful connection between Imago Dei and procreation also appears in another passage in the same set of derashot in *Genesis Rabbah*:

R. Diftai in the name of R. Aha [said]: The celestial beings were created in the image and likeness [of God] and do not procreate, while the terrestrial creatures procreate but were not created in the image and likeness [of God]. Said the Holy One blessed be He: Behold I will create him [man] in the image and likeness of the celestial beings, and he will procreate like the terrestrial beings.[18]

This later, amoraic homily expounds Gen 1:26–28, drawing upon the *zelem* notion expressed in various tannaitic homilies. Like the tannaim, R. Diftai regarded the Biblical verses as expressing a deep connection between humankind's creation in God's image and its procreative ability. Indeed, the ability to procreate seems for R. Diftai to be the reason why human beings were created in the Divine image. Man's uniqueness lies in the fact that his being combines the Divine image with the ability to procreate. The angels ("the celestial beings") are in God's image and likeness, but they do not procreate.[19] All other mundane

concept appears in *Avot de-Rabbi Nathan*, Version A, 2 (p. 23): "Adam was born circumcised, as it says 'And God created Adam in His Image,' and Seth too was created circumcised, as it says 'and he begot a son in his likeness after his image.'" That this *derasha* implies that man alone was created in the Divine image is uncertain, because in the ancient world the difference between male and female was not perceived as a "sexual" difference. According to Galen, both males and females have a similar sexual organ, in men it extends outward and in women it is folded inside her. The same applies to the other physical differences between them. Even though woman was regarded as physiologically inferior, she was seen as belonging to the same biological species. See Laqueur, *Body and Gender*, Chapter 2. The question of whether this notion is also characteristic of rabbinic literature requires further study. In any event, one cannot conclude from the aforementioned passage in *Avot de-Rabbi Nathan* that woman was not created in the Image. Another midrash that may allude to some reservations as to whether woman was created in the Image of God is found in *Genesis Rabbah* 27 (p. 64): "'Male and female did He create them' (Gen 1:27) [parallel versions quote Gen 5:2]. This is one of the matters that they wrote for King Ptolemy the King, 'Male and his holes did he create them.'" Two interpretations have been offered for the rabbinic "rewording" of this verse. The one is to deny the Image of God to the woman, whereas the other is to negate the possibility of Adam having been created as an androgynous creature.

17 *b. Yeb* 54a. See also *Sifre Numbers* 84 (pp. 83–84); *Mekhilta de-Rabbi Ishmael, Amalek* 3 (p. 213).

18 *Genesis Rabbah* 8.11 (p. 62).

19 Ibid.

creatures ("the terrestrial beings") can procreate, but are not created in God's image and likeness.[20] Mankind's essence lies in the combination of these two aspects, and as such his essence, that is, his *telos*, is to procreate and multiply images of God.

R. Diftai's homily implies that the creation of the human as procreative is a Divine need. Why else would God make a creature in His image and grant him the power of procreation, if not to replicate his image? Conceivably, God "needs" to make a name for Himself in the terrestrial realm. However, it is more likely that R. Diftai's words ascribe an iconic sense to the terms "image" and "likeness," whereby God inheres in the human image. The purpose of creating the Divine image in "terrestrial" beings, those who have the ability to procreate, is to expand and intensify Himself. We should further note that, in this passage, the ability to multiply is not offered as a solution to the problem of death, for in that case God would have sufficed with His likeness, which already exists in the eternal celestial beings.

The connection which we have identified in tannaitic sources between Imago Dei and the procreation of mankind is particularly striking when we consider the tannaitic tendency to diminish the significance of the theme appearing in the second half of Genesis 1:28 – humankind's dominion over the earth: "subdue it and have dominion over . . . ." In contrast, other post-Biblical Jewish literature avoids connecting this verse with the ideas of Imago Dei and procreation. The isolated references to this verse in this literature focuses on its last clause, as if to say, God's image is a metaphor for mankind's dominion over the land.[21] This further highlights the uniqueness of the tannaitic interpretation of Genesis 1:28, which downplays the component of human dominion over the earth, explains the notion of "presence" (in the *image*), and stresses the independent goal of the procreation of "the Image and Likeness" – namely, the expansion and augmentation of God.

II. "'THIS IS THE BOOK OF THE GENERATIONS OF ADAM' – THAT IS AN EVEN GREATER PRINCIPLE"

R. Eleazar's rebuke of Ben Azzai – "some preach well and act well . . ." – sharpens the tension between the practical imperative that Ben Azzai derives from his understanding of the notion of *zelem Elohim* in the Torah, and his contemplative-celibate lifestyle, in which he engages in the study of the Torah

[20] As opposed to the midrash of R. Akiva, this midrash views the plural form of "we shall make" as including the angels as well. Other midrashim tend to stress that the creation in the Image stresses man's uniqueness in comparison with the angels. See, e.g., *Genesis Rabbah* 4 and the many parallels in other midrashic passages. See also *The Life of Adam and Eve* (vitae) 12–17, and compare to *b. San* 38b.

[21] See *Ben Sira* 17:1–12; *Jub* 2:14; and throughout the writings of Philo. See Cohen, *Be Fertile and Increase*, 68–76.

without actually contributing to the augmentation of the *zelem*. In elaborating this issue, I attempted to show that Ben Azzai's retort, "The world can be sustained by others," relates not only to the continued existence of the human race, but also to the "existence" of God who inheres in His images. This reading sheds light on another passage, one which has drawn extensive attention from traditional commentators and modern scholars alike. In *Sifra Kedoshim* we read the following:

"Love your neighbor as yourself" (Lev 19:17). R. Akiva says: This is a fundamental principle of the Torah.

Ben Azzai says: "This is the book of the generations of Adam" (Gen 5:1). This is an even greater principle than that.[22]

A common interpretation of this passage is that R. Akiva asserts that the "fundamental principle of the Torah" is that a person must treat others in the same way as he treats himself. Ben Azzai, on the other hand, maintains that the point of departure is not the subject, but the other, because "in the likeness of God made He him" (Gen 5:1) so that a "person should not say: since I have been disgraced, let my fellow be disgraced with me."[23] This interpretation is difficult on a number of counts. First, it is not based upon the words of Ben Azzai. If Imago Dei is the source of Ben Azzai's exegesis, then why does he not quote the second half of the verse, "in the likeness of God made He him," or other phrases in Genesis expressing the same idea? In the formulation as it appears in *Sifra*, Ben Azzai is intent upon expounding the first half of the verse, "This is the book of the generations of Adam," which the above interpretation fails to explain. Second, why would the editors of *Sifra* present R. Akiva as ignoring the Imago Dei conception, when he is in fact the very sage who adopts and promotes this concept elsewhere? After all, in the passage from *Tosefta Yebamot* discussed earlier, both R. Akiva and Ben Azzai subscribe to this notion. Moreover, the fundamental principle purportedly issued here by R. Akiva is Hillel's "golden rule": "What is hateful to you, do not do to your neighbor: That is the whole Torah. The rest is commentary; go and learn" (*b. Shab.* 31a). As observed earlier, Talmudic tradition ascribes the *zelem* conception to Hillel; its mirror conception (i.e., "What is hateful . . . ") bears a deep affinity to this *zelem* theosophy.

According to another interpretation, R. Akiva expresses a particularistic conception. The word "your neighbor" in Scripture refers exclusively to Israel. Ben Azzai, on the other hand, adopts a universalistic approach, because the Imago Dei conception that predicates his comments relates to the entirety of humankind. This interpretation too is plagued by the aforementioned difficulties.

[22] *Sifra, Kedoshim* 4 (109) and see also *y. Ned* 9.3 (41c). I prefer the version in the *Sifra* to that in *Genesis Rabbah* 24:7 (pp. 236–237) which most scholars regard it as the original version. See the editor's remarks on the passage from *Genesis Rabbah*.

[23] This interpretation is identical to that appearing in *Genesis Rabbah* (see editors comment ibid.), except that the attributions are reversed. See also Goldin, "R. Aqiba," n. 130.

It seems most plausible to read this statement in light of the above-mentioned passage from *Tosefta Yebamot*. R. Akiva's "golden rule" is identical with Hillel's golden rule: "What is hateful to you, do not do to others" (*b. Shab* 31a), both of which are derived from the idea of man as Imago Dei. Ben Azzai, on the other hand, argues that "the generations of man" (*toldot adam*) – that is, engaging in procreation – is an even greater principle. Accordingly, the ideal is not confined to the honoring of the Divine image, in the sense of its preservation and protection, but rather to its expansion and augmentation. A number of considerations support this reading. First, it anchors the words of both R. Akiva and Ben Azzai in the *zelem* conception, and as such is consistent with their ideas as familiar to us from other sources. Second, it creates a parallel between their views here and their views in the passage in *Tosefta Yebamot*. In the latter, R. Akiva focuses the appearance of the *zelem Elohim* in Genesis 9:6 on preventing harm to God's image (i.e., the prohibition of murder). Ben Azzai, by contrast, also connects the *zelem* idea to the verse "and you shall be fruitful and multiply," from which he derives a duty to maintain and expand God's image. It is for this reason that "This is an even greater principle than that."[24] As in the *Yebamot* source, the dispute in the *Sifra* is not between two antithetical positions, but is rather a development of the common theosophical conception shared by both Sages. Here, too, Ben Azzai's comment is better read as adding to the statement of R. Akiva than as a rebuttal. Third, the scriptural context of Ben Azzai's verse supports this understanding. The verse expounded by R. Akiva has as its background the *zelem* conception, and its source in Hillel's "golden rule." Ben Azzai's statement is more enigmatic. The scriptural context of the verse he quotes is as follows:

> This is the book of the generations of Adam. When God created Adam, in the likeness of God made He him; male and female He created them. And when they were created, He blessed them and called them Adam. When Adam had lived one hundred and thirty years, he begot a son in his likeness after his image, and he named him Seth. (Gen 5:1–3)

These verses, like the chapter as a whole, establish a powerful connection between the creation of humanity in God's image and human procreation. The intertwining of the two implies that the one, procreation, is the logical outgrowth of the other, *zelem Elohim*. Their interrelatedness also stands out against the background of Genesis 5 which, as distinct from Genesis 1:26–28, omits all mention of mankind's dominion over creation. The first verse presages the contents of the entire chapter: "This is the book of the generations of Adam . . . in the likeness of God made He him." In other words, the generations of Adam (*toldot adam*), that is, his progeny, are the generations of the image. Verse 2 teaches that the *demut* (the Divine image) consists of male and female. The verse implies that, concurrent to the act of creation (*be-yom bero Elohim*

[24] This is an additional reason for preferring the version preserved in *Sifra, Kedoshim* and in *Yerushalmi Nazir*, over the version which appears in *Genesis Rabbah* 24.

adam), God implanted the procreative mechanism in His *demut*. The capacity to reproduce is thus depicted as one of its essential components, almost the definition of the human who is an Imago Dei. To ensure the efficacy of this arrangement, God blesses them. While the contents of the blessing are not mentioned, these verses parallel almost exactly Genesis 1:27–28, indicating that the blessing is "Be fruitful and multiply." In sum, we learn that God's purpose in creating mankind is in fact a necessary step toward His own augmentation and expansion. The verse that follows relates that Adam "begot a son in his likeness after his image" (5:3), begging the question: In whose image and after whose likeness? At first glance, the answer is clear: in the image of his father (and mother). However, upon deeper examination it becomes clear that these words hearken back to the image of God, to *demut Elohim*, in which Adam was made.[25] The Bible imparts to us the effectiveness of the human reproductive mechanism, which succeeds in replicating God's image; as the midrash states "from now on – 'in our image after our likeness.'"[26] Indeed, the chapter immediately proceeds to recount the "generations of Adam" which are in actuality none other than the generations of God's image.[27] Chapter 5 thus fuses creation in the Divine image and mankind's procreative capacity into an indivisible unit, both of which are meant to disseminate and magnify God's image. To my mind, this was Ben Azzai's understanding of Genesis 5, whose initial verse he cites in his homily.

These considerations invite the conclusion that Ben Azzai's "even greater rule" is procreation. Ben Azzai quotes the verse "this is the book of the generations of Adam," because this verse introduces the chapter whose principal concern is the idea that human procreation maintains and magnifies the "image" of God. Reading Ben-Azzai's fundamental rule in light of his words in *Tosefta Yebamot*, which imputes an iconic sense to the likeness, we can conclude that the word "generation" (*toldot*)[28] is meant to stress the dynamic nature ascribed by Ben Azzai to the Imago Dei conception – namely, the imperative of sustaining and augmenting the image of God.[29]

Not surprisingly, in numerous homilies the Rabbis depict the sin of the generation of the Flood as that of refraining from procreation, and the

[25] Von Rad, *Genesis*, 68–69; Westermann, *Genesis*, 355–356.

[26] See *Genesis Rabbah* 22:2 (p. 181), and see earlier.

[27] It is for this reason that such significant space is dedicated in the beginning of Genesis to genealogies (see Chapters 10, 11, 32). These chapters all derive from the principle established in Gen 1:27–28, which reappears at the beginning of Chapter 5. See Mopsik, "The Rabbinic Tradition," 51–52; Westermann, *Genesis*, 354.

[28] The word "generations" in the Bible is always interpreted in rabbinic literature as procreation, and not as "the history." See, e.g., *Genesis Rabbah* 12.4 (p. 89): "'These are the generations of the heavens and the earth in their creation:' On the day that they were created, on that very day they procreated." To the best of my knowledge, midrashic literature does not interpret the word "generations" in any other way.

[29] Compare the interpretation of Abramson, *Studies*, 128, in the name of the book *Moshav Zekenim*.

righteousness of Noah as manifest in the fact that he had progeny. Thus, we read in *Genesis Rabbah* 30.2:

"He is swift upon the face of the waters, may their portion on the land be cursed" (Job 24:18). "He is swift upon the face of the waters" – a decree was decreed against them that they should perish by water. "May their portion on the land be cursed": He who punished the generation of the Flood will punish all of them. And why all this? "May none turn aside by way of the vineyards" (ibid.). Their intention was not to plant vineyards,[30] but Noah's only intention was to be fruitful and multiply in the world. "These are the generations (*toldot*) of Noah."[31]

In other homilies the Rabbis interpret the sins of the generation of the flood in terms of adultery, incestuous sexual relationships, and non-procreative emission of seed, all of which are seen as the antithesis of procreation.[32]

It is no accident that the Rabbis interpreted the sin of the generation of the flood as refraining from procreation. They specified that sin which in their perception frustrated the divine purpose of creation. After all, what could possibly justify such an extreme response if not an act that frustrated the Creator's intent? Humanity's annihilation in the flood is justified by its failure to realize the intent of creation; Noah is saved because, by having progeny, he did not betray this intent.

III. THE NUPTIAL BLESSINGS

The theosophic-theurgic understanding of Imago Dei, whereby human procreation is intended to maintain and augment God, receives liturgical expression in the Nuptial Blessings (*Birkat Hatanim*)[33]:

Our rabbis taught: The nuptial blessings are recited in the presence of ten all seven [days] ... How does one bless? Rav Judah says:

1. Blessed are You, O Lord our God, King of the Universe, who created everything for His own honor.
2. Who creates man.

[30] The Biblical phrase "the way of the vineyards" was interpreted in a number of midrashim as referring to procreation. See *y. Yeb* 6.5 (7c): "R. Yehuda ben Pazi said: It is written, 'Between rows [of olive trees] they make oil ... may none turn aside by way of their vineyards' – their sexual relations were not for the sake of children." See also *b. San* 108a. My analysis is based on Sabato, Toward the Vinyard, who points out that "way" hints at sexual relations (see *Genesis Rabbah* 70.4 (p. 801), the vine being a symbol for fertility (see, e.g., *m. Nid* 9:11).

[31] *Genesis Rabbah* 30.2 (p. 233), quoted from MS. Vatican 30. The homilist reinterpreted the word "swift" (*kal)* as meaning "cursed" based on the continuation of the verse, which refers to *tekulal* and the similarity of the roots *kal* and *tekulal.*

[32] Regarding "corruption" in the context of forbidden relationships, see, e.g., *b. San* 57a; *b. Avodah Zarah* 23b. On "the way of the land" as sexual contact, see *b. Ber* 32b; *b. Shab* 114a; *y. Ket* 5.7 (30b).

[33] *b. Ket* 7b–8a, according to the printed edition, *Tractate Ketuvot*, with variants, 40–44. See also *t. Meg* 4.14 (p. 236); *y. Meg* 4.4 (75a).

3. Who has created man in His image, in the image of the likeness of His form (*be-zelem demut tavnito*), and prepared for him out of himself an eternal building (*ve-hitkin lo mimenu bianyan 'adei 'ad*). Blessed are You, O Lord, Creator of man.
4. May the barren one greatly rejoice and exult when her children will be gathered in her midst in joy. Blessed are You, O Lord, who makes Zion joyful through her children.
5. May You greatly rejoice the beloved companions, as you made your creature to rejoice in the Garden of Eden of yore. Blessed are You, O Lord, who gladdens the bridegroom and the bride.
6. Blessed are You, O Lord our God, King of the Universe, who has created joy and gladness, bridegroom and bride, rejoicing, song, mirth, and delight, love and fellowship, peace and friendship. Speedily, O Lord our God, may there be heard in the cities of Judah and in the courtyards of Jerusalem the voice of joy and the voice of gladness, the voice of the bridegroom and the voice of the bride, the voice of the joyous shouts of bridegrooms from their canopies and of youths from their feasts of song. Blessed are You, O Lord, who gladdens the bridegroom with the bride.

These blessings are attributed to the amora R. Judah, but many scholars date their composition to the tannaitic period, some dating it even earlier.[34] These blessings may be divided into two groups. The latter three blessings deal with the joy of the wedding celebration, combined with aspects of Israel's redemption and the rebuilding of Jerusalem. Here I will focus on the first three blessings, which form an independent unit and pertain directly to our subject.[35]

The opening blessing declares that God "created everything (*hakol*) for his honor." While the final word may be literally translated as "for His honor," it reads better as "for His own sake" (*li-khevodo*), signifying that the world was created in response to Divine need. This conception is expressed in numerous other Talmudic sources, some of which we will discuss later.[36]

Reading the second blessing, "who creates man," after the first blessing "who created everything for His own sake," suggests that man was created in order to honor God. The verb "create" (*yotzer*") is taken from Gen 2:7: "And the Lord God created (*va-yitzer*) man."[37] The idea that the creation of humanity was for God's benefit or honor appears both explicitly and implicitly in many Talmudic and midrashic sources. Thus, for example, in a passage from Tosefta discussed above: "One should not use his face, hands, and feet except for the honor of his Maker, as it is said, 'The Lord has made every thing for his purpose'

34 Anderson, "Garden of Eden," 132. According to Flusser and Safrai (In the Image 461), the third blessing was composed during the Second Temple period.

35 The two groups of blessings are closely connected. For example, the fifth blessing compares the bridegroom and his bride to Adam and Eve, "as you gladdened Your creatures in the Garden of Eden," while the "rejoicing" refers to their sexual union. As mentioned, both of them are "the Image" ("male and female He created them"). See Anderson, "Garden of Eden."

36 See *m. Avot* 6.11.

37 In a number of midrashim the root *y.ts.r* is used specifically for the creation of man. See *Pesikta Rabbati* (Freedman, ed.) p. 129a; Idel, *Golem*, 13–14; *Genesis Rabbah* 14.3 (p. 128). However, this root can also denote the creation of the animals: see Gen 2.19, and *Genesis Rabbah* 17.4 (p. 155).

(*le-ma'anehu*; Prov 16:4)."[38] The affinity of this statement to the two first blessings is obvious. As I indicated when discussing this midrash, the meaning it attributes to the verse differs from the verse's literal sense, according to which "for His own sake" means for the sake of the righteous one. Rather, it bears a striking resemblance to the first blessing "who created everything for His own honor" (i.e., for His own purposes). In my earlier discussion, I observed the theurgic significance of the saying in *Tosefta Berakhot* and its affinity to Hillel's *zelem* conception.[39] The word *hakol* is even used by Hillel, who declared "If I am here, all (*hakol*) is here."[40] I suggested there that in that particular formulation the word *kol* refers to God dwelling within Hillel – that is, in every human being. The word *hakol* ("all") carries a similar meaning in some early Christian writings, particularly those with a Jewish background. For example, in Colossians 1:15–17: "He [Jesus] is the image of the invisible God, the firstborn of all creation: For in him were all things created, that are in heaven ... all things were created through him and for him ... And he is before all things (*to pan*), and in him all things hold together."[41] The word *to pan* is almost certainly a Greek translation of the Hebrew word *hakol*. Apparently, the verse in Proverbs is interpreted here in a manner similar to the manner in which it was interpreted in Hillel's saying in *Tosefta Berakhot*.

The transition from "created everything (*she-hakol bara)* for His own honor" to "who created man" is not merely a transition from the general to the specific. In many homilies, the creation of man is the fundamental purpose of all of creation. For example, in *Genesis Rabbah* 8.5 we read:

All the Rabbis say in the name of R. Hanina ... "Very" (*me'od)* is [identical with] *adam*,[42] as is written, "And God saw everything that He had made and behold it was very (*me'od*) good" (Gen 1:31) – behold, *adam* was good.[43]

Regarding the third blessing, David Flusser and Shmuel Safrai note that it forms the turning point of the Nuptial Blessings.[44] It begins with the statement that God "created" man in His image, the word "created" again being borrowed from Genesis 2:7: "And the Lord God created the man." To emphasize and possibly also to explain creation in the Image, a parenthetical remark is added to the blessing, "in the image of the likeness of His form," which relates to the subject of the sentence, God. The words *be-zelem demut* ("image" and

[38] *t. Ber*4:1 (p. 9). See also *b. Shab* 50b, and the statement of Rabbah in the name of R. Yohanan, *b. Bava Bat* 75b.

[39] Chapter 6.II.

[40] *b. Suk* 53a. See also *Avot de-Rabbi Nathan*, Version A, 27 (p. 55). *y. Suk*. 55a; *t. Suk* 4:3 (p. 198); *Mekhilta de-Rabbi Ishmael, ba-hodesh* 11 (p. 243).

[41] And in Eph 4:10–11.

[42] In Hebrew, the words *meod* and *adam* are composed of the same letters, although differently arranged.

[43] *Genesis Rabbah* 8.5 (p. 58); see also *Genesis Rabbah* 9.12 (p. 73).

[44] Flusser and Safrai, "In the Image," 455.

"likeness") are obviously taken from the description of man's creation in the opening chapters of Genesis: "Let us make man in our image, after our likeness . . . God created man in His own image, in the image of God He created him" (1:26–27); "in the likeness of God He made him . . . and he begat a son in his own likeness, after his image" (5:1–3); and, finally, "for in the image of God did he make man" (9:6).

While Genesis uses the words *zelem* and *demut*, the word *tavnit*, form or figure, is not found there. This word appears in Deuteronomy, in an entirely different context, that of the prohibition on worshipping images: "For your own sake, therefore, be most careful . . . not to act wickedly and make for yourselves a sculptured image in any likeness whatever, the *form* (*tavnit*) of a male or a female, the *form* of any beast on earth, the *form* of any winged bird that flies in the sky, the *form* of anything that creeps on the ground, the *form* of any fish in the waters below the earth" (4:16–18). The phrase "the form of male or a female" in the beginning of the verse apparently connotes the human being. The same word appears in Isaiah in a similar context: "He gives it a human *form*, the beauty of a man, to dwell in a shrine" (Isa 44:13). The word *tavnit* and its variants appear frequently in the Dead Sea Scrolls. For example: "The form (*tavnit*) of a male was not there . . . For their structure was from dust (*me'afar tavnitam*)"[45]; "And what was someone born of a woman . . . a structure of dust (*mivneh 'afar*) molded out of water" (*Thanksgiving Scroll*, 1QH 13 xiv–xv)[46]; "although I am a creature of clay, fashioned with water, a foundation of shame and a source of impurity (*u-mivneh ha-hata'ah*)" (ibid., 1 xxi–xxii).[47] Similarly, in *War of the Sons of Light with the Sons of Darkness* (1QM 10 xiv): "of beasts and birds, of man's form (*tavnit adam*), of the generations of his [rib]."[48] According to Flusser and Safrai, during the Second Temple period *tavnit* served as a poetic synonym for "human being." The above quotations, especially those from the *Thanksgiving Scroll*, express generally negative views of the physical aspect of man's being.[49] In contrast, the opposite tendency is found in the Nuptial Blessings. Humankind's physicality is extolled, for the express reason that humanity was created by God in God's form. The appearance of the word *tavnit* in the blessing emphasizes that Gods' image and likeness is encapsulated in humankind's concrete existence. Conceivably, the inclusion of this word in the blessing is also connected to the word "building" (*binyan*) found later in the blessing, a word to which we will return below.

The second half of this blessing – "and prepared for him out of him (*mimenu*) a building for eternity" – is particularly interesting. The word "*mimenu*," "from" or

[45] *Mysteries 4Q 301* Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, vol. 2: 665.

[46] Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, vol. 1: 150–151.

[47] *Hodayot, 1QH*, Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, vol. 1: 159.

[48] *1 QM* Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, vol. 1: 131. see also *Hodayot*, 7.9 and 4; *Serah Hayahad* 4. 21–22.

[49] See Flusser, "Dualism of Flesh and Spirit," 158.

"out of him" refers to man, from whose rib or side the woman was created. "And the Lord God built from the rib (*tzela'*) which He had taken from the man, a woman" (Gen 2:25). The blessing thus conveys the message that through the woman there will be built an eternal building, meaning humanity. There remains, however, the question of the phrase "for him" (*lo*) in the first part of the blessing. To whom does this refer? In my opinion, this pronoun refers back to God, and is best rendered as "for Himself." In other words, from Adam God formed the woman for himself (*lo*, i.e., *le-'azrmo*) so that together they may create His (God's) eternal building. The procreation of man, who was created in the Divine Image, is intended to sustain and augment the Creator. At first glance this reading seems less plausible than the conventional reading, according to which "for him" refers to Adam, the meaning being that God "fixed" the woman for man ("for him") from himself so that through her agency humanity would be sustained and proliferate over the generations ("an everlasting building").[50]

It would seem, however, that the accepted reading of the third blessing is somewhat awkward, and that my proposed reading is smoother, albeit linguistically speaking both are plausible. The advantage of my proposal derives from other considerations. According to the reading proposed here, the words "and he prepared for him from him" are inseparably connected with the first section of the blessing. The blessing begins with the declaration that God created man "in His image, in the image of the likeness of His form." In other words, God is present in man. In order to augment His likeness, God prepared "from His image" ("from him") the woman, and by her agency he created "for Him" – that is, for Himself – an eternal building.[51] Obviously, this interpretation is based on an iconic reading of the terms "image" and "likeness." The perception of *image* as presence explains how the creation of mankind in God's image, with the capacity to procreate, maintains and augments God's image. These two foundational notions, Imago Dei and the human ability to procreate, are inseparably interwoven into the third blessing. The blessing may also allude to the connection between them by the use of two words based on the Hebrew root *bnh: tavnit* ("form") and *binyan* ("building"). The wordplay implies that, through the procreation of the Divine form, God's building is constructed. In sum, the third blessing presents a theosophical drama, in which God extends Himself out into His image, and "installs" in this image a mechanism for self-procreation which eternally expands God.[52]

According to this reading, the third blessing expresses the themes found in the array of Talmudic and midrashic sources discussed above. This complex confers

[50] This interpretation is suggested by Flusser and Safrai, "In the Image"; Anderson, "Garden of Eden," 135; Hultgard, "Image of Woman."

[51] The phrase "from him" (*mimenu*) is similarly ambiguous, for it may refer to man, but may also plausibly refer back to God, in which case it would mean "from Himself." The blessing may intentionally be worded in an ambiguous form.

[52] Compare Baer, *Israel Among the Nations*, 87. For a slightly different interpretation, see Mopsik, "The Rabbinic Tradition," 57, n. 89, and compare Satlow, *Marriage*, 293, n. 123.

a theosophical-theurgic meaning to the idea of creation in the Divine image and fuses the iconic understanding of the terms *zelem* and *demut* with the procreative capacity of humankind, created in God's image. In fact, the third blessing may be read as a positive formulation of the statements of Ben Azzai and R. Eleazer b. Azariah: "He who does not engage in procreation annuls the Likeness, as it says, 'For in the image of God did He make man' and it is written, 'And you, be fruitful and multiply.'"

This reading likewise connects the third blessing with the two prior blessings, especially the first one, the first blessing being elucidated by the two blessings which follow. The first blessing states that God "created everything for His own honor." This in turn implies both that God "created man" and that He created him "in His image, in the image of the likeness of His form" in order to create for Himself, from him, by way of the woman, "an eternal building." In this reading, in contrast to Rashi's interpretation (in *b. Ket* 7b), the words "for His glory" are interpreted almost literally. Indeed, scholars have noted tannaitic homilies in which the word "glory" refers to the anthropomorphic appearance of God.[53] The connection between the first blessing and the third blessing also appears in a late midrash in *Deuteronomy Rabbah* (p. 10): "All that I created in my world was only for the purposes of procreation ... Why? For this is the glory of the Holy One blessed be He."[54]

Regarding the word "everything": in the above discussion I noted a series of Talmudic and external sources in which the terms "everything" (*kol*) and "the All" (*hakol*) connote God's presence in man. I will merely note here the similarity between this blessing and Hillel's saying, "One must wash his face, hands, and feet daily for his Maker, as it is said, 'The Lord has made everything for his purpose' (*kol pa'al YHWH le-ma'anehu;* Prov 16:4)." The third blessing thus confers the first blessing with a meaning similar to that given to the verse from Proverbs. Just as the phrase "the Lord made every thing" (*kol po'al*) is related to the dictum "One must wash ..." so too the third blessing focuses the phrase "He made everything" upon humanity, created in God's image.

These blessings give liturgical expression to the theurgical theosophy of creation in the Image. The placing of these blessings at the beginning of the Nuptial Blessings, at the moment that marriage is being constituted, is an explicit proclamation that the principal purpose of marriage is to procreate images of God, who inhere in the human image. While these blessings allude to other aspects of marriage as well – interpersonal, sexual, social – national, and eschatological[55] – these are peripheral to its main goal, that of procreation.

As distinct from the interpretation proposed here, the accepted interpretation of the third blessing (understanding "for him" as "for man") severs the second clause, "and prepared for him from him" from the first, "who created ... in His

53 *Sifre Deuteronomy* 355 (p. 422); and Fishbane. "Measures of Glory," 62–63.
54 Deut 12, p. 10; Fishbane, "Measures of Glory," 62–63.
55 Anderson, "Garden of Eden," 134–136.

form." This reading fails to explain the connection between the statement that God created humankind in His image and the creation of woman and the construction from her of an "eternal building." There does not appear to be any essential connection between the two parts, their joint appearance seeming like a grafting together of two distinct, unrelated issues. This interpretation also separates the third blessing from those preceding it, and isolates all three of them from the entirety of Talmudic sources which, as stated above, intertwine the concept of Imago Dei with procreation.

The merging of the notion of creation in God's Image with the institution of marriage is unique to rabbinic literature and liturgy. The idea of *zelem Elohim* does not appear in any of the ancient Jewish parallels to *Birkat Hatanim*.[56] In a section from the book of Tobias, Tobias prays on his wedding night: "You made Adam, and gave him Eve his wife for a helper and stay. From them came mankind. You have said, 'It is not good that man should be alone, let us make for him an aid like unto himself."[57] While Tobias recalls here the creation of Adam and Eve and their progeny, no mention is made of *zelem Elohim*. An additional parallel cited by scholars is found in the scroll of the *War of the Sons of Light Against the Sons of Darkness* describing the wonders of creation, the "deeds of the beasts and winged creatures, the form of man and the lineage of his rib" (1QM 10 iv). The conceptual and linguistic proximity between "the image of his form"/"the form of man," and "He fixed from him"/"the lineage of his rib" merely sharpens the distinction between them. In the Scrolls the word "form" (*tavnit*) connotes man's form, whereas in the Nuptial Blessings it also, or primarily, indicates the form of God. The idea of creation in the Image is totally absent from this passage, just as it is absent from the sectarian texts in their entirety.[58]

Fragment 4Q502 contains an additional passage which has been reconstructed and interpreted by some scholars as a Qumran parallel to the rabbinic Nuptial Blessings: "The man and his wife to bring forth true offspring ... his beloved ... brothers and sisters, elders and youth ... a feast for our rejoicing ... elderly men and women ... young women."[59] Joseph Baumgarten challenged this interpretation of the fragment, and argued that the passage was not intended

[56] *Jubilees*, Philo and *Ben Sira* do not contain any possible parallels to the Nuptial Blessings, nor do they discuss the issue of procreation in connection with Gen 1:28. See Cohen's discussion in *Be Fertile and Increase*, at p. 72.

[57] See *Tobias* (long version) 8:6; Flusser and Safrai, "In the Image," 454.

[58] See, e.g., the description of creation in *The Thanksgiving Scroll*, 1.13–16. However, see also 4Q405, 14–15 1, 2–5; and 16Q403 frag. 5; and 4Q504, 8 *DJD* 7 (1982), p. 162. These fragments, taken from a work entitled "Songs of the Sabbath Sacrifice," utilize the terms "form" (*tavnit*) and "likeness" (*demut*) in relation to God, albeit without referring to man as the likeness, image, or form of God. See Newsom, *Songs of Sabbath Sacrifice*, 1–5. Newsom expresses doubt as to whether these songs were composed by the sect.

[59] Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, 995–997; *DJD* VII, pp. 81–105. The editor of this passage, Baayah, contends that this was the sectarian version of the rabbinic Nuptial Blessings, and was intended for those members of the sect who lived outside the community. Cf. Weinfeld, "Liturgy," 167–169. This statement depends, *inter alia*, on the issue of the existence

for wedding celebrations, but rather for elderly people joining the sect.[60] I am not qualified to decide this dispute, but it bears mention that, if the passage is for a wedding celebration, then we must note that the sectarian blessing mentions procreation but contains no reference or mention of *zelem Elohim*.

The following paragraph appears in Ephesians 4:10–16:

> He [Jesus] that descended is the same also that ascended up far above all heavens, that he might fill all things [*plerose tapanta*]. And he gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers; For the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ: Till we all come in the unity of the faith, and of the knowledge of the Son of God, unto a perfect man, unto the measure of the stature of the fullness of Christ. . . . From whom the whole body fitly joined together and compacted by that which every joint supplies, according to the effectual working in the measure of every part, *makes increase of the body unto the edifying of itself* [*oikodome*] in love. (my emphasis – Y. L.)

Further on in this chapter, the body of Christ is described as "the likeness of God": "that you put on the new man, which in the likeness of God is created in righteousness and true holiness" (ibid.). As mentioned earlier, a number of scholars have noted the Jewish origins of this passage.[61] The close affinity between *Birkat Hatanim* and this Deutero-Pauline hymn is indicated by the terms common to both of them: "likeness of God," "everything," and "edifice." In the Nuptial Blessings, human procreation provides God with "an eternal building," whereas for the author of the epistle the procreation (i.e., conversion) of the believers in Christ leads to "the edifying of itself" [*oikodome*]. The theurgy of procreation in the Nuptial Blessings is replaced in the Christian hymn by the theurgy of faith. The act of procreation which, according to *Birkat Hatanim*, provides "bricks" for the "building" of God, is replaced in the epistle by the apostles, the teachers, and the missionaries, who add new believers "for the ritual of building the body of the Messiah."

The difference between the rabbinic and the Pauline approaches to marriage and procreation is profound. Whereas the rabbinic tradition sees procreation (and by extension – marriage) as a religious ideal of the highest degree, to the extent that certain Sages even attributed theurgic dimensions to it, the Pauline conception regards celibacy as a condition for religious fulfillment. For Paul, the supreme ideal is to cleave to the Lord and to become "as one spirit."[62] According to Paul, the married person is inevitably spiritually torn, and hence only half a Christian.[63] Marriage is the lesser of the two evils, serving as a safety net for

and scope of celibacy as an ideal in the sect. See Baumgarten, "Restraints," and earlier literature cited at n. 1; Qimron, "Celibacy."

[60] Baumgarten, "Marriage," whose suggestion is based on a parallel he found in Philo's descriptions of the feasts of the Therapeutae; see *On the Contemplative Life*, 68.

[61] See Chapter 7.IV and bibliography there. See also Meeks, *The First Christians*, 88. Regarding the term *en oiko* in the Pauline epistles, see Meeks, ibid, 75.

[62] I Cor 6:17; see Sanders, *Paul and the Law*, 553.

[63] I Cor 7:1–7; and see Brown, *The Body and Society*, 55.

those who are unable to repress their sexual desires. Nevertheless, as deep as the differences between these two conceptions may be, they cannot obscure the fact that both traditions are based on a similar thought structure: in both of them the "building" must retain its wholeness, even though it does so by different and even conflicting methods.[64] Paul and his followers adopted the line of thought found in early rabbinic literature and attributed to Hillel, according to which all men are created in the image of God (being His extensions or His limbs) and are commanded to maintain and augment him. However, Paul significantly altered the content of this complex. According to him, humanity as a whole forfeited its "Image" as a result of the Fall; it then became bestowed specifically upon Jesus – the New Man – who alone bears the title of "Son of God."[65] The Christian "Image of God," like the rabbinic God, also requires maintenance and expansion, but the process of "building Him" is not effected by way of procreation, but rather by the addition of believers to the Church. By virtue of their faith the believers become limbs of His body, and in so doing they complete his "edifice." In fact, in most of his (authentic) epistles, Paul describes his mission in theurgic terms: "Know you not that your bodies are the members of Christ" (1 Corinthians 6:15); "So we being many are one body in Christ and every one members one of another" (Romans 12:5). The more believers there are who cleave to him, the greater the dimensions of the Christ/Image of God.[66]

IV. BEIT SHAMMAI AND R. ELIEZER DIFFER

R. Eliezer rejects the Hillelian and Akivan version of the *zelem* theosophy, separating the commandment to procreate from the notion of the image of God. His argument derives from the tradition recorded in two *baraitot* in *Bavli Yebamot* 63b that we discussed earlier. The second baraita reads as follows:

It was taught: R. Eliezer says: He who does not engage in procreation is as if he sheds blood, as it says, "For in the image of God did He make man" and it is written immediately after, "And you, be fruitful and multiply"

R. Eleazar b. Azariah says: It is as though he has diminished the Image, as it says, "For in the image of God did He make man" and it is written immediately after, "And you, be fruitful and multiply"

Ben Azzai says: It is as though he sheds blood and diminishes the Image [...]

They said to Ben Azzai: Some preach well ...

Ben Azzai replied: But what shall I do ...[67]

[64] See Eph 5:31–32.
[65] See I Cor 15:22, 49; Baer, *Israel Among the Nations*, 87–88; Davies, *Paul and Rabbinic Judaism*, Chapter 3, esp. 53–55.
[66] See also I Cor 12:12–27.
[67] *b. Yeb* 63b.

The comments of R. Eleazar ben Azariah and Ben Azzai were discussed above. According to the tradition ascribed by the baraita to R. Eliezer, it can be argued that R. Eliezer rejects the attempt to connect procreation with the more typical rabbinic understanding of *zelem*. He compares abstention from procreation to bloodshed, based on their textual juxtaposition in Genesis 9:6–7. It may be that R. Eliezer deliberately disregards the reference to "for in the image" which appears in the middle of these verses. Read this way, R. Eleazar ben Azariah critiques R. Eliezer, emphasizing that the consequences of abstention from procreation cannot be limited to the "lower" world. If we are to rely on the authenticity and accuracy of this Babylonian tradition, R. Eliezer's disregard for the notion of creation in the Image cannot be passed off as incidental. More likely, it indicates his demurral with respect to the concept, or at least regarding the iconic-theurgic sense attributed to it by R. Eleazar b. Azariah, Ben Azzai, and R. Akiva.

In my opinion, the dispute over the concept of creation in the Image, especially in its iconic sense, is also played out in the conflicting views of R. Eliezer and the Sages in the continuation of the above passage from *Bavli Yebamot*:

Our Rabbis taught: And when it halted, they would say: "Return, O Lord, [You who are] Israel's myriads of thousands' " (Num 10:36) – this teaches that the Divine Presence does not rest on less than two thousand and two myriads [ten thousands] of Israelites. Should the number of Israelites happen to be two thousand and two myriads less one, and any particular person has not engaged in procreation, does he not thereby cause the Divine Presence (Shekhinah) to depart from Israel?

Abba Hanun said in the name of R. Eliezer: He deserves the death penalty, as it says: "And they had no children" (Num 3:4). If they had they would not have died.

Others say: He causes the Divine Presence to depart from Israel, as it is said, "To be a God for you and for your seed after you" (Gen 17:7): when there is "seed after you" the Divine Presence dwells [among them], but when there is no "seed after you," among whom shall [the Shekhinah] dwell! Among the trees and among the stones?

The first opinion connects procreation with the Shekhinah in a slightly different manner from the previous one, whereas the source attributed to "Others" connects the departure of the Shekhinah with lack of procreation in a manner more reminiscent of the earlier baraita. The middle ground between these two views is occupied by Abba Hanun in the name of R. Eliezer, who concludes from the death of Aaron's sons that their death was punishment for refraining from procreation. However, in comparison to other opinions, and similar to the previous baraita regarding the diminishment of the *demut*, there is a thundering silence regarding the departure of the Shekhinah. In other words, while abstention from procreation is viewed with extreme severity, it is unrelated to the presence or departure of the Shekhinah. In contradistinction to the other opinions, R. Eliezer "suffices" with the statement that one who refrains from procreation "is liable for death" – he does not cause the diminishment of the Image. In Chapter 7 we analyzed a homily (*Genesis Rabbah* 8.6) linking the *Shekhinah*'s presence in

man with the idea that man is an image of God. The different views in this baraita (especially the last two) serve as a recap of the dispute which appeared in the previous beraita; the editor of the Bavli deliberately chose to juxtapose them. These traditions combine with other sources, indicating that R. Eliezer and R. Akiva disagree with regard to the connection between human beings and God.

As I have indicated in several places, R. Eliezer's approach is rooted in the Shammaitic rejection of the *zelem* idea and its theurgic derivatives. In fact, the school of Shammai, as opposed to that of Hillel, refrained from deriving halakhot concerning procreation from the verses in Genesis, which link procreation with creation in God's image. As we shall observe below, the Bible does not actually command procreation (at least not explicitly). Thus, the sources from which this commandment is derived can shed light on the meaning ascribed to it. In *Mishnah Gittin*, Beit Shammai goes as far as Isaiah to locate a verse concerning the mitzvah of procreation: "Was not the world made only to be populated? As it says, 'He did not create it as a waste, he formed it to be inhabited' (Isa 45:18)."[68] Isaiah's description of creation makes no reference to the idea of creation in the Divine image. Indeed, scholars have noted that the idea expressed in this chapter is the antithesis of an anthropomorphic conception and, by extension, of any conception of creation in the Divine image, the hallmark of the description of creation in Genesis 1.[69] Boaz Cohen surmised that Beit Shammai's rationale is akin to the "natural law" (*ius naturale*) of Rome.[70]

Regarding the minimal requirements for the fulfillment of the commandment of procreation, the Tosefta records the following dispute: "Beit Shammai says: Two sons, as were the sons of Moses, as it says: 'The sons of Moses were Gershom and Eliezer'' (1 Chr 23:15)." Beit Hillel, on the other hand, states that the mitzvah mandates a son and a daughter, based on Genesis 5:2: "Male and female created He them."[71] According to Beit Shammai, Moses would not have ceased marital relations with his wife without having fulfilled his duty to procreate; hence, two boys must have sufficed. It is unclear whether this "exegetical" argument fully explains Beit Shammai's ruling, or whether there is a deeper rationale.[72] In any case, here too Beit Shammai's ruling is unrelated to the relevant verses in Genesis 1–9. By contrast, and as expected, for Beit Hillel the fulfillment of the commandment by the birth of both a male and a female expresses the notion ensconced in the first chapters of Genesis, wherein the ultimate purpose of creation in God's Image is the perpetuation and augmentation of human existence, specifically in the form of "male and female." In other

[68] *m. Git* 4.5 and see *m. Ed* 1:14.

[69] Weinfeld, "God the Creator"; Fishbane, *Biblical Interpretation*, 325–326.

[70] Cohen, *Jewish and Roman Law*, vol. I: 28.

[71] *t. Yeb* 8:4 (p. 249). See also *m. Yeb* 6.6; Lieberman, *Tosefta Kipeshuta, Yebamot*, p. 70; *b. Yeb* 61b–62a; *y. Yeb* 6.6 (7c).

[72] See *b. Yeb* 62*a*; cf. Cohen, *Be Fertile and Increase*, 126–128, n. 11.

words, the commandment to procreate is not simply to establish another generation. Rather, it includes creating the potential for ongoing procreation in the future, realized by the production of a male and a female. This is confirmed by the rule that "If one of them died or if one of them became infertile, he is not permitted to desist [from continuing to procreate]" (ibid.). Similarly in *Yerushalmi Yebamot* (6.6 [7c]): "A barren woman or a eunuch, and those who cannot give birth, do not count." Presumably, these rules (and certainly the last one) are exclusively in accordance with the opinion of Beit Hillel.[73]

Beit Shammai and R. Eliezer's understanding of the commandment of procreation is unrelated to any theurgic elements, as well as from any notion of creation in the Divine image. As noted above, the dispute is not limited to the exegetical-philosophical dimension, but has normative implications as well. In the following section I will enumerate a number of additional implications of this ideological dispute concerning the halakhot relating to procreation.

V. THE LAWS OF PROCREATION

The concept of creation in God's image in its iconic-theurgic construction, as formulated by Beit Hillel, and particularly in the circles of R. Akiva and his colleagues and students, may shed light on the corpus of tannaitic halakhot concerning procreation. These halakhot appear primarily in *Tosefta Yebamot* 8 and in *Mishnah Yebamot* 6 and in the corresponding Talmudic passages.[74]

Classic exegetes and contemporary scholars have noted that the Torah does not command procreation. Although in Genesis the procreation of humanity constitutes a major, if not the principal goal of God's creation of the world, the verses are couched in the form of a blessing rather than in the prescriptive form of an imperative. Indeed, nowhere is procreation referred to as a commandment. Similarly, nowhere in post-Biblical, non-rabbinic literature is a commandment to procreate found. The Dead Sea Scrolls do not contain any reference to such a duty and, while Philo and Josephus do stress procreation as the goal of marriage, it is not framed as a formal imperative.[75] In the New Testament as well procreation is not couched as a formal obligation.

Procreation as a normative positive commandment first appears in tannaitic sources: "A man shall not abstain from procreating unless he already has

[73] *y. Yeb* 6.6 (7c); cf. Rashi at *b. Yeb* 62b, *s.v. benei banim*.

[74] These laws were analyzed by Gafni, "Institution of Marriage"; and more thoroughly by Cohen, *Be Fertile and Increase*, Chapter 3. Both of them follow Lieberman in *Tosefta Kipeshuta*, *Yebamot*, 56–75. The following discussion is largely based on their studies.

[75] The blessing in Genesis 1:28, "Be fruitful and multiply," was interpreted by Philo as "the proliferation" of the virtues, the prevailing of the intellect over feelings and earthly tendencies; see *Questiones et solutiones in Genesium* 2 56, suppl. 1, pp. 142–143, and Cohen, *Be Fertile and Increase*, 72–76, 139.

children."[76] According to the majority view, "The man is commanded regarding procreation, while the woman is not" (ibid.) while, according to R. Yohanan b. Beroka, the duty is incumbent upon both of them, in accordance with the verse, "And God blessed *them*, and God said to *them*: Be fruitful, and multiply." The majority view regarding both the duty of procreation and its restriction to males is not textually supported.

"If one of them died or became castrated he is not permitted to desist [from procreating]" (*Tosefta Yebamot*, ibid.) and, according to the Yerushalmi, "A barren woman or a eunuch and those who cannot give birth do not count [towards the fulfillment of the mitzvah to procreate]."[77] Apparently, these rulings are only in accordance with the view of Beit Hillel, because according to Beit Shammai even a daughter capable of giving birth does not count. As I indicated above, according to Beit Hillel the commandment is not restricted to populating the world in the narrow sense. It also bespeaks a commitment to future procreation, although the scope of this ruling is moderated somewhat by the determination that "the sons of sons have the status of sons."[78]

There is also a view that, even if a person has fulfilled his duty, he should continue to try to procreate even through old age. "R. Joshua says: If a man married a woman in his youth, he should marry again in his old age; if he had children in his youth, he should also have children in his old age, for it is said, 'In the morning sow your seed and in the evening do not withhold your hand, for you know not which shall prosper, whether this or that, or whether they shall both alike be good' (Eccl 11:6)."[79]

According to tannaitic halakhah, procreation is to be fulfilled within the bonds of marriage.[80] As we shall immediately see, the commandment to procreate determines the character of marriage as a social institution.[81] Marriage's varied objectives – personal, societal, and economic – were certainly not alien to the Sages,[82] and precisely for that reason the fact that the goal of procreation, specifically, is predominant in the tannaitic marital laws attests to that commandment's primacy in tannaitic thinking,[83] as attested by the Nuptial Blessings. A clear expression of this is found in Tractate *Derekh Eretz*: "There is one who marries

[76] *m. Yeb* 6.6; *t. Yeb* 8.4 (p. 249); *Tanhuma* (Buber) *Genesis*, 26; and *Deut. Rabbah* 10; see Lieberman, *Tosefta Kipeshuta, Yebamot*, 67.

[77] *y. Yeb*. 6.6 (7c); see Lieberman *Tosefta Kipeshuta, Yebamot*, 67.

[78] *t. Yeb* 8.4 (p. 249). For details regarding this halakhah, see Yerushalmi, ibid., "Male children [are accounted] like children; female children are not [accounted] like children. The son of the son and the daughter of a daughter are accounted, the daughter of a son and the son of a daughter are not accounted." Compare Rashi at *b. Yeb*, ibid., *s.v. benei banim* and the commentators on the Yerushalmi, *ad loc.*

[79] *b. Yeb* 62b.

[80] However, there is an opinion that a *mamzer* (i.e., one born of an incestuous/adulterous relationship) does count toward the fulfillment of the mitzvah. See the view of R. Abin in *y. Yeb* 2.6 (3b).

[81] See Josephus, *Against Apion* 2, 199.

[82] See Herr, "Marriage," and the examples he cites, including *m. Ket* 4.8–9; and see also *b. Yeb* 62b.

[83] Gafni, "Institution of Marriage," 16.

a woman for the sake of licentiousness; there is one who marries a woman for money; there is one who marries a woman for the sake of prestige; and there is one who marries a woman for the sake of Heaven."[84] The final goal, "for the sake of Heaven," is contrasted with all terrestrial goals, and its focus is specifically procreation.[85] Conceivably, this reading (for the sake of Heaven = procreation) encapsulates the concept of *zelem* as presence, including the theurgy of procreation involved therein.

The duty of marrying appears in *Tosefta Yebamot*: "A man may not live without a woman."[86] The context in which this halakhah appears is a discussion of the laws of procreation, further attesting to the purpose of the institution of marriage in tannaitic thinking.[87] Additional evidence of this is provided by the dispute regarding the correct wording of a passage from the Tosefta concerning a woman's obligation to be married. According to Saul Lieberman, the version stating that a woman is also commanded to marry is in accordance with R. Yohanan b. Beroka, according to whom a woman is also obligated to procreate. On the other hand, the version stating that the woman is entitled to "live without a man" is in accordance with the majority opinion, which does not regard her as being commanded to procreate.[88] The degree of importance attached to marriage as a framework for procreation is further attested to in the following amoraic statement: "R. Yohanan said in the name of R. Meir: They may not sell Torah scrolls, except for the purpose of using the money for study or for marriage." The reason given by the Bavli for this rule is Isaiah 45:18: "He did not create it as a waste, He formed it to be inhabited."[89]

The commandment of procreation also imposes limitations on the choice of a partner. A man without sons is forbidden to marry a woman who is "a barren woman, an old woman, an *eylonit* (a woman who has never reached sexual maturity), a minor, or one unable to give birth."[90] Regarding the woman's choice, there are differing views, which apparently reflect the dispute between R. Yohanan b. Beroka and the other sages. R. Yohanan b. Beroka's view is that a woman is commanded to procreate; hence, "a woman may not be married, even to a eunuch." The Sages, on the other hand, contend that she is not obligated to procreate and therefore is allowed to marry a eunuch or anyone else who is

[84] Heiger ed. (New York, 1938), 246–247; see also *Derekh Eretz (Arayot)*, 6.2.

[85] Kister, "Notes," 281.

[86] *t. Yeb* 8.4 (p. 243); see Lieberman, *Tosefta Kipeshuta*, *Yebamot*, 67. Regarding the age at which a person is obliged to marry, see *b. Kidd* 29b–30a.

[87] Herr ("Marriage," 38–39) asserts that in the halakhic perception marriage is not an independent goal. In contrast to the Roman conception, adopted later by the Christian tradition, in which marriage has a "sacramental" (or even mystical – see Eph 5:32) status, in the Jewish tradition marriage is purely instrumental. This is attested to by the blessings recited at the betrothal – not "who sanctifies canopy and betrothal," but rather "who sanctifies *Israel* by way of canopy and betrothal." Compare Katz, *Halakhah and Kabbalah*, 72.

[88] *t. Yeb* 8.4; Lieberman, *Tosefta Kipeshuta*, *Yebamot*, 68.

[89] *b. Meg* 27a; *b. Yeb* 61b.

[90] *t. Yeb* 8.4 (p. 249).

unable to sire children.[91] The duty to procreate similarly gives rise to a prohibition on the use of contraceptives: "A man must not take a root-potion for the purpose of becoming impotent"[92]; but regarding the woman, there are again conflicting traditions, which seem to reflect the dispute between R. Yohanan b. Beroka and the Sages. Similarly worthy of mention is a baraita which states that "those who are childless engage in intercourse [even] during years of famine."[93]

Moreover, the obligation to procreate is liable to curtail the marriage: "If a man take a wife and lives with her for ten years, during which time she does not bear a child, he may not nullify [the commandment of procreation]" (Mishnah *Yebamot*, ibid.). The Tosefta, *ad loc.*, supplements this ruling stating that "He must divorce her and pay her *ketubah*, because he did not merit building himself from her." Citing the source of this ruling, the Tosefta states: "Although there is no definite proof [i.e., Biblical source] for this statement, there is nevertheless an allusion to it, [as is said] 'After Abram had dwelt ten years in the land of Canaan' (Gen 16:3)." This draconian halakhic ruling was qualified by the tannaim in a number of ways[94]: (a) "In our manner we have learned that [the years of] dwelling outside the land [of Israel] do not count in the number"[95]; (b) "If the man was ill or the woman was ill, or if the man went abroad or her husband was in prison [or both were in prison – *b. Yeb.* 64a], [these years] do not count in the number" (*Tosefta*, ibid.); (c) "If she miscarried, [the period of ten years] is reckoned from the time of the miscarriage."[96] A woman who was divorced after ten years of a childless marriage, "is permitted to marry another, and the second husband may also live with her for [no more than] ten years" (Mishnah, ibid.). The Tosefta adds: "How many times is she permitted to marry? Up to three times; from then on she may only marry one who has a wife and children,[97] but if she married one who has no wife and children, she is divorced without a *ketubah*, because the marriage was contracted in error."[98]

Our survey does not exhaust the many halakhot pertaining to the laws of procreation, but it suffices to present a clear idea of its stature in tannaitic law. The tannaim were the first to transform the Biblical blessing into a commandment, making it almost into a prime principle, one which is compared to two of the most important commandments, the prohibition of bloodshed and the

91 Following Lieberman, *Tosefta Kipeshuta*, *Yebamot*, 68; see esp. line 17.

92 *t. Yeb* 8.4 (p. 245).

93 *b. Ta'an* 11a; *y. Hag* 1.4 (6d).

94 The Mishnah does not specify whether he is obligated to divorce her. There is an amoraic debate on this issue; see *b. Ket* 77a.

95 *t. Yeb*, 8.4; see *m. Yeb* 6.6 and baraita at *b. Yeb* 64a; *y. Yeb* 6.6 (7c); and *Genesis Rabbah* 45.3 (p. 449).

96 *m. Yeb* 6.6.

97 See *b. Yeb* 64b, and the dispute between Rabbi, who prohibits her from marrying a third time, and R. Simeon b. Gamliel, who prohibits her only on the fourth occasion. The Mishnah reflects Rabbi's view.

98 *t. Yeb* 8.4 (p. 250).

mandate to study of Torah. This comparison is not just an abstract exaggeration. It is translated into concrete terms: in order to marry a woman (and thereby procreate) it is permitted to sell a Torah scroll.[99]

Existent sources attribute the transformation from a blessing to a commandment to a time no later than the end of Second Temple period. The Mishnah and Tosefta attribute the dispute over the scope and sources of the commandment to the Schools of Shammai and Hillel, but scholars are skeptical regarding the authenticity of these ascriptions. But even if we assume the historical accuracy of these sources (and I see no substantial reason for rejecting them), it is clear that the laws of procreation, especially those which pertain to marital matters, owe their development and expansion to a later period. Most scholars contend that these laws originated at the end of the first century or the beginning of the second century in the generation of Yavneh.[100] The textual evidence suggests that this thought structure is most associated with Hillel, Beit Hillel and, in the later period, Rabbi Akiva, his colleagues, and his students.

David Daube is of the opinion that the commandment of procreation was brought into the rabbinic corpus from Roman Law. In his view, the Rabbis drew inspiration from Augustinian legislation encouraging fertility among the higher classes in Rome, whose ranks were continually diminishing during his day.[101] The rabbinic adoption of this legislation was the result of a number of factors, including the insurrections against Rome during the years 66–70 CE[102] and the Hadrianic persecutions, which lead to a dwindling of the Jewish population (particularly that of the males), and the danger of assimilation threatening Diaspora Jews.[103] In the absence of support for this in the sources, this proposal is conjecture at best. Moreover, Daube himself notes the significant differences between the Augustinian legislation and the laws of procreation as they appear in the Tosefta and the Mishnah. In order to substantiate a theory of influence, it must be shown that there is at least a partial overlap between the legal details of both legal systems. Finally, this proposal does not explain the elevated status given this commandment in the tannaitic world view.

The establishment and formulation of the procreative laws may be partially the result of historical and perhaps even external influences, but in the end all scholars agree that its decisive motivation was religious.[104] This fact is discernible, not only in the nature of the halakhot (e.g., those permitting the sale of a Torah scroll), but also in the reasons given for them.

99 See also in *b. Kidd* 29b.

100 Daube, *Duty of Procreation*; R. Gordis, "Be Fruitful and Multiply"; Cohen, *Be Fertile and Increase*, 139; Feldman, *Birth Control*, 52.

101 Daube, *Duty of Procreation*, 23 ff. Concerning the Augustinian legislation, see Frank, "Augustus' Legislation," and Colish, *The Stoic Tradition*, 386 ff.

102 Following the Destruction and the Hadrianic persecutions, there were some Rabbis that may have espoused celibacy. See *t. Sot* 15.11; and Lieberman, *Tosefta Kipeshuta*, *Sotah*, 243.

103 Daube, *Duty of Procreation*, 35–37.

104 Gafni, "Institution of Marriage," 16; and Cohen, *Be Fertile and Increase*, 162.

After specifying the laws of procreation, as surveyed above, the Tosefta at *Yebamot* Chapter 8 cites the teaching of R. Eleazer b. Azariah and Ben Azzai: "He who does not engage in procreation annuls the Image," and so on. This teaching (and the ensuing exchange) contains the tannaitic interpretation of the conception of creation in the Image. As we noted above, this conception itself developed in their *Beit Midrash* as a structure of thought that underlies a number of the laws of procreation. The location of the teaching in *Tosefta Yebamot* was not by chance. Its appearance immediately after the corpus of halakhot dealing with the laws of procreation attests to the affinity between them, and it constitutes the conceptual underpinning that dictated the formulation of the halakhot.

The position of these teachings in the halakhic context of the Tosefta is also paralleled in the first three Nuptial Blessings. Our thesis is that these blessings express a similar idea, accompanying the celebration of the marriage and proclaiming its central purpose: procreation. This structure is reenacted in *Tosefta Yebamot*, where the teachings of Ben Azzai and R. Eleazer b. Azariah appear immediately following a collection of halakhot, almost all of which pertain to the institution of marriage, contracted for the realization of the religious precept of procreation. The connection between this "aggadic" teaching and the laws of procreation in which it is incorporated is further supported by the following fact: in my earlier comments I showed that Beit Shammai and R. Eliezer both endorse the normative status given to procreation, but separate it from the idea of creation in the Image, and divest it of any theurgic dimension. In their view, the precept is based on other, more down-to-earth considerations, summarized in the general imperative of "to be inhabited it was created." Notably, the laws cited in the Tosefta are specifically reflective of the view of R. Akiva and his colleagues. According to Beit Shammai, a person is considered as having fulfilled his obligation even if his children die during his lifetime or are unable to reproduce, and he is under no obligation to produce others in their stead. According to R. Eliezer (the "Shammaite"), the barren woman is not regarded as "unsuitable" and there is no obligation to divorce a woman after ten years of childlessness. He does not regard marriage with a barren woman as a "mistaken marriage" and she is entitled to her *ketubah* when they divorce. These rulings of R. Eliezer are not mentioned in the Tosefta and, apart from the citation of Shammai's view regarding the minimal requirement for fulfillment of the commandment of procreation (and another tradition, ascribed to R. Nathan, of the dispute between the two schools), all of the halakhot cited in the Tosefta are brought in the name of Beit Hillel and R. Akiva.[105] Not by chance, R. Eliezer's teaching "He who does not engage in procreation is as though he sheds blood," omitting the rationale of creation in the Image, is not cited in Tosefta, but only in

[105] See the words of R. Yohanan, *b. San* 86a: "[The author of] an anonymous *tosefta* is R. Nehemiah . . . and all of them are based on the teachings of R. Akiva". See Goldberg, "R. Aqiba."

the parallel baraita in *Bavli Yebamot*. The same applies to the additional baraita cited there in his name (64a), which expresses a similar view.

The editing of the Tosefta is thus consistent: on the one hand the halakhot of Beit Hillel and R. Akiva are juxtaposed with their aggadic teachings and, on the other hand, are not interspersed with the halakhah and aggadah of Beit Shammai and R. Eliezer. This supports my thesis regarding the connection of the *zelem* conception in the teachings of Ben Azzai and R. Eleazar b. Azariah to the preceding halakhot concerning procreation. It also substantiates the assumption that the halakhic dispute between Beit Hillel, R. Akiva and his colleagues/disciples, and Beit Shammai and R. Eliezer, is rooted in their fundamental disagreement over the concept of creation in the Divine image.

This view of matters also has the support of logic. Beit Shammai and R. Eliezer have a more balanced approach. In their view, the laws of procreation do not represent the sole justification and framework for marriage. The rationale of "to be inhabited was it created" allows a certain leeway. It legitimates the idea of the marital bond serving other purposes as well, pertaining to the couple as such, such as economic security and emotional stability, and the broader societal context. Conceivably, they identified an element of sanctity as inhering in the marital connection as such.[106] According to the approach of Beit Hillel, R. Akiva, and his colleagues, the precept has its rationale in the *zelem* theosophy, according to which procreation maintains and empowers the Divine "Image." The theurgical aspect of the act of procreation explains how this precept became a religious principle of supreme importance; according to Ben Azzai it is "the fundamental principle of the Torah" which in his view overrides social and personal interests and other intrinsically important religious values.

[106] An example of this is the dispute between the two houses regarding the grounds for divorce in *m. Git* 9.10.

9

From the Temple to Humanity: Transformation in the Focus of Holiness

I. "SOLOMON'S BED" – GOD HAS GREATER LOVE FOR PROCREATION THAN FOR THE TEMPLE

Until this point we have suggested that, for many of the tannaim, the creation of humanity in God's image and the commandment to procreate reflect God's yearning to expand and augment his presence in the mundane realm. Against the background of this theurgic theosophy, the following homily is not surprising:

"Thus shall you bless" (Num 6:22). This is what is stated, "There is Solomon's bed, encircled by sixty warriors" (Song of Songs 3:7). What reason would Solomon have to be concerned with a bed that the verse should say "There is his bed"? Rather the verse is only concerned with the king to whom peace belongs.

"There is his bed." This refers to the Temple. But why was the Temple compared to a bed? Just as a bed is only for procreation, so it was with the Temple. Whatever was in it was fruitful and multiplied, as is stated "the poles grew long" (1 Kgs 8:8). It also says: "The gold was gold of *Parvaim*" (2 Chr 3:6 – a place name, read here as a pun on *parim veravim* – i.e., proliferating) – that it would produce fruit. And so it says "And he built the house of the forest of Lebanon" (1 Kgs 7:2). Why was it compared to a forest? Just as a forest is fruitful and multiplies, so too the Temple. Whatever was in it was fruitful and multiplied. Hence it is said "There is his bed" (Song 3:7)[1]

As is typical in rabbinic treatment of Song of Songs, the words "There is Solomon's bed" are read as referring to the "the King to whom peace belongs"[2] – that is, this rather late homily attributes procreation to God himself.[3]

[1] *Tanhuma (Buber), Naso* 16 (p. 50); cf. reference to parallel texts. On *Lebanon* as the Temple, see *Sifre Deuteronomy* 6 (p. 14).

[2] This point was made by a number of scholars, most prominently by Lieberman, *Mishnat Shir ha-Shirim*; see *b. Shev* 35b.

[3] Compare to the homily attributed to Rav Huna, *Genesis Rabbah* 53.6 (p. 560) on the verse "And God visited Sarah" (Gen 21:1). See also *Tosefta Kippurim* 2.15 (ed. Lieberman; p. 238). See also *b. Bava Bat* 71a; Idel, "Sexual Metaphors," 203, contends that this image is of extreme antiquity. This theory relies *inter alia* on a parallel in a Gnostic text, *The Gospel of Phillip*, trans.

Subsequently, the passage relates not only to God's "bed" but also to human, or more precisely Israelite, procreation, the homily being based upon the words "Thus you shall bless" with which the priests bless Israel.[4] According to the homilist, this blessing harkens back to the ancient blessing of "you shall be fruitful and multiply." In other words, the blessing coming forth from the Temple, "in which everything was fruitful and multiplied," is interpreted as an emanation of the Divine bounty, a kind of effulgence originating from the procreation of God himself.[5] It is entirely possible that this homily also embodies the iconic-theurgic conception of creation in God's Image.

God's procreative power is also implied by the following passage from *Tanhuma*:

> The thief and the adulterer are [especially] serious, because they cause the departure of the Shekhinah. The Holy One blessed be He, fills the realms above and the realms below, as it is said, "Do I not fill heaven and earth, says the Lord" (Jer 23:24). And in the place where the adulterer comes to commit adultery, is not the Holy One there in his glory (*bi-khevodo sham*)? As is said, "The whole earth is full of his glory" (Isa 6:3). And the adulterer says to the Holy One: Remove yourself, and give me room for a little while. The matter is exceedingly difficult . . .[6]

This paragraph is based on a homily in *Genesis Rabbah* (discussed earlier) whereby "but henceforth it shall be, 'In our image, after our likeness' (Gen I:26): neither man without woman [. . .] nor both of them without the Shekhinah." It will be recalled that, according to this homily, the procreation of man is intended to replicate God's image and thereby augment the Shekhinah.[7] In the exegesis of *Midrash Tanhuma*, God "fills the realms above and the realms below" but his presence is particularly manifest in the sexual act: "in regard to the place where the adulterer comes to commit adultery, is not the Holy One there in his glory?" The adulterer's act of intercourse "causes the departure of the Shekhinah" and the "matter is exceedingly difficult." The Shekhinah's departure is not the consequence of the prohibited physical contact so much as it is the result of

W. W. Isenberg, in *The Nag Hammdi Library,* ed. J. M. Robinson (New York: Harper & Row, 1984), 150. The motif of the Sanctuary as the bedroom of God appears in one of the *selihot* for the Yom Kippur, in Haberman, *Liturgical and Secular Poetry*, 69; cf. the Kaliric hymn, earlier in Chapter 6.II.8. For our purposes these sources are secondary, because the sexual act is seen more as symbolic of closeness and intimacy (between God or His attributes and Israel) than as a means of procreation.

4 See *m. Tam* 5.1; *t. Sot* 7:7. Compare also the opinion of R. Meir in *Sifra, Mekhilta de-Miluim.* regarding Moses' prayer on the eighth day of the sanctification of the sanctuary.

5 The idea that whatever was in the Temple was eternally proliferating also appears in the passage from *Tanhuma (Buber)*, *Terumah* 11b.

6 *Tanhuma (Buber), Naso* 6 (p. 43).

7 *Genesis Rabbah* 22.2 (p. 206). See earlier Chapter 6.II.6 and Chapter 8.I-III. Regarding the connection between the *Tanhuma* passage and the homily of R. Akiva in *Genesis Rabbah*, see Goldberg, *Shekhinah*, 352.

the lack of procreative intention that informs the act.[8] The homily evokes an audacious image in which the cleaving of a man to his wife, naturally intended for procreative purposes, is an act in which God in his Glory Himself participates.[9] Hence the carnal act of the adulterer is "exceedingly hard for God," not so much by reason of the act's intrinsic severity as by reason of the departure forced upon him. For not only is God not replicated by this act, He is actually forced to confine and diminish himself.

The first homily in the *Tanhuma* carries an additional focus of interest for our purposes, for it boldly forges a link between sexuality, fertility, and the Temple. God's yearning to reproduce himself emanates to "all that is in it," even to the rods of the ark. This is the homilist's way of alluding to the ritual dimension involved in the commandment of procreation. This finds explicit expression in the following statement of the amora, R. Abin:

R. Abin said: The Holy One blessed be He desires (*hibev*) procreation more than He does the Temple. What is the evidence for this? "A month they were in Lebanon, and two months at home." (1 Kgs 5:14)[10]

In my view R. Abin's statements should be read in the context of the *zelem* theosophy. The theurgic effect of the commandment of procreation is to extend and broaden God, explaining God's preference for this commandment over other rituals. It is not clear from the amora's comments whether the feature of "all that was in it procreates" also applies to the Temple but human procreation has a preferred status, or whether procreation is man's exclusive legacy. I think that the first possibility is likelier, for otherwise the comparison itself would be out of place.

[8] This is confirmed by the continuation of the derashah in *Tanhuma, Naso*, see ibid. See also *Sifre Deuteronomy* 258 (p. 282), presenting a view that is antithetical to the other view in *b. Yeb* 64a.

[9] It is notable that a number of Talmudic dicta connect the prohibition of adultery and *mamzerut* with the stamping of the Divine image on the newborn. For example, in *b. Avodah Zarah* 54a, Resh Lakish says something to this effect: The Holy One, blessed be He, says: "Not only do the wicked of this earth forfeit my coin, but they force me yet to put my stamp thereon." This refers to God, whose image is ingrained in bronze. (The result of adultery is the imprinting of God's image on the newborn. The motif of the king's portrait on his coins was discussed in the *Mekhilta de-Rabbi Ishmael, ba-Hodesh* 8 (p. 262). See also earlier in Chapter 6.II.2 and cf. the passage from the Church Father Athanasius and references to literature, ibid. Compare Ta-Shma, *Ha-Nigleh She-Banistar*, 91, n. 20. The *mamzer* is perceived as a "mutation," and by extension as an "undesirable" image, a perception possibly reflected as well in the Talmudic statement that "a bastard does not survive" (see *b. Yeb* 78b). To the extent that he is – like any image – an extension of God, he weakens and depletes him. See Ta-Shma, "A Mamzer is not Alive?", 33–36. The procreation of *mamzerim* is thus perceived as a form of negative theurgy, and as such regarded as a grave offense. (This may also be the reason for the law found in *b. Yeb* 15b: "A bastard is only one who was born to those who are subject to capital punishment.") Hence, in my view, this is the proper way of understanding *Lev. Rabbah* 23.12, in which the bastard is described as the imprinting of the image of the adulterer in the offspring. See R. Eliezer in *b. Ned* 20b (and in *Kallah* 1.10, Heiger ed., p. 137); and *b. Bava Mets* 59b.

[10] *y. Ket* 5.8 (30b).

Either way, the *Tanhuma* homily and R. Abin's statement share a common conception: human procreation fulfills a ritual and apparently theurgic function.

These two homilies demonstrate a connection between sexuality, procreation, and the Temple, which is particularly striking against the background of early Jewish sources, which categorically sever sexuality (and by extension procreation) from any vestige of sanctity. Garry Anderson has demonstrated how, in this respect, Talmudic literature deviated from the earlier halakhah. *Jubilees*, for example, clearly separates the realm of holiness from that of the profane and the impure. In doing so a parallel distinction is established between the Sabbath and the Temple, on the one hand, and sexual activity and its inherent impurity, on the other. Anderson shows how *Jubilees* posits the Shabbat as the actualization of the Temples' holiness (in time, and in the non-Temple setting).[11] Just as the person who had a seminal discharge (*ba'al keri*), the menstruate-impure woman and the woman who gave birth must purify themselves before approaching the Temples boundaries (*Jub* 3:9–13), so too with regard to the Sabbath: "but on the seventh day is the Sabbath of the Lord your God. The man that does any work on it is to die: Any man who desecrates this day, who lies with a woman [...] is to die" (*Jub* 50:5–8). So too in the Garden of Eden, whose sanctity *Jubilees* compares to the sanctity of the Temple, there were no sexual relations.[12] The distancing of those who had seminal discharges from the sanctuary is also particularly stressed in the Dead Sea Scrolls, which appear to be have originated from Priestly law.[13] The *Temple Scroll* states:

> And if a man has had a nocturnal emission he shall not enter any part of the Temple until three days have passed. He shall wash his clothes and bathe .... but they shall not enter my temple in their uncleanliness and defile it ... And if a man lies with his wife and has an emission of semen, for three days he shall not enter anywhere in the city of the Temple in which I install my name.[14]

The *Damascus Scroll* similarly states: "No man should sleep with his wife in the city of the Temple, defiling the city of the Temple with their impurity."[15]

[11] Anderson, "Garden of Eden," 130.

[12] *Jub* 4:22–26: "And he testified to the Watchers, who had sinned with the daughters of men; for these had begun to unite themselves, so as to be defiled with the daughters of men, and Enoch testified against (them) all. And he was taken from amongst the children of men, and we conducted him into the Garden [...] For the Lord has four places on the earth, the Garden of Eden, and the Mount of the East, and this mountain on which thou art this day, Mount Sinai, and Mount Zion (which) will be sanctified in the new creation for a sanctification of the earth; through it will the earth be sanctified from all (its) guilt and its uncleanness throughout the generations of the world." Regarding the angels in the *Book of Jubilees*, see Dimant, "Sons of Heaven." On the polemic among medieval commentaries on this matter, see Pines, "Nahmanides."

[13] See Sussman, "History of the Halakhah"; Knohl, "Sectarian Conflict."

[14] *Temple Scroll* 45 vii–xii; Yadin ed., vol. 2: 192–193. Cf. *Temple Scroll* 46 xvi–xviii; Yadin, vol. 2: 200.

[15] *Damascus Document* (*CD*) 11 i–ii; Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, 371.

Scholars have shown that the Shabbat is depicted in the model of the Temple's sanctity.[16] However, with respect to sexual activity on the Sabbath, rabbinic halakhah sharply diverges from the approach found in *Jubilees* and in the Qumran writings: "When is the conjugal obligation of scholars (*talmidei hakhamim*)? R. Judah said in the name of Samuel: Every Friday night. 'That brings forth its fruit in its season' (Ps 1:3). Rav Judah said: This [refers to the one] who performs his marital duty every Friday night."[17] This halakhah, which is apparently of tannaitic origin,[18] can be explained by the connection in rabbinic literature between the Sabbath and the Temple, and that between the Temple and procreation (and sexuality): If the sanctity of Sabbath is patterned after the sanctity of the Temple, which itself is described as "the bed of the Holy One Blessed be He," and as a place which "is only for purposes of procreation," then there is little room to doubt why "The time for conjugal relations by scholars is every Friday night."[19]

This halakhah would seem related to the Rabbis' iconic-theurgic interpretation of Imago Dei. As noted above, the meaning of the assertion that "the Holy One blessed be He procreates" is that human beings are created in his Image. Human procreation is endowed with the plenitude flowing from God who dwells in the Sanctuary, eternally expanding himself through and by way of

[16] Anderson, "Garden of Eden"; and see esp. Green, "Sabbath as Temple." Regarding the Biblical sources of the connection between the Sabbath and the Temple, see the references in Anderson, "Garden of Eden," n. 19.

[17] *b. Ket* 62b; *b. Bava Kam.* 82a; *y. Ket* 5.6 (30b).

[18] See *m. Ket* 5.9: "and she eats with him from one Sabbath eve to the next Sabbath eve," the expression "she eats with him" apparently being a euphemism for intercourse. See Safrai, *Studies*, vol. II: 507, 509. This is also connected to the custom of eating garlic on Sabbath eve, as a means of improving the quality of the semen. See the baraita in *b. Bava Kam* 82a and the Mishnah in *m. Ned* 3.10 and 8.6. The baraita in *Bava Kamma* mentions this custom as one of the ten edicts of Ezra. It is of interest to compare this halakhah to the baraita in *b. Nid* 38a: "The pious men of old would only have intercourse with their wives on the fourth day of the week" According to the amoraim, these pietists (*hasidim*) wished to prevent the possibility of a birth on Shabbat so as to prevent desecration of the Sabbath (based on their calculation of a woman's pregnancy lasting 271–273 days). However, scholars maintain that "the pious ones of old" wanted to prevent causing any element of impurity of the Shabbat (see Exod 19:10, 15). According to this explanation, they would certainly have refrained from intercourse on the Shabbat itself. This approach does not merely reflect a more stringent approach than that of the tannaim, but rather a diametrically opposed conception of the sexual act and procreation, closer to that of *Jubilees* and the sectarian writings. See Safrai, *Studies*, vol. II: 507, 509, and his bibliography; and Anderson, "Garden of Eden," n. 21.

[19] This does not mean that the Sages annulled the category of impurity of a nocturnal emission or other forms of impurity connected with sexuality (*niddah, yoledet*, etc.) which may contaminate the Temple. See, e.g., *m. Yoma* 1.1. But see also the statements of R. Shimon bar Yohai in *b. Nid* 31b, which explain that a woman who gave birth (*yoledet)* brings a sacrifice, not because of impurity (as in Lev 12:2–8), but rather because during her labor pains she may have taken an oath never to have relations with her husband again; and hence the Torah commanded her to bring a sacrifice" (Rashi [ibid.] explains that she is obligated to do so [for having taken an unnecessary oath] – known as *shevu'at bitui*; see *b. Ker* 26a).

human procreation. The *zelem* conception and the notion of profusion of the Divine image from which it derives express an approach both alien and antithetical to the approach expressed in the *Book of Jubilees* and the writings of the Dead Sea sect. Their combination explains the conceptual chasm between these writings and Talmudic sources regarding the relationship between sexual contact and procreation on the one hand, and the Sanctuary and the Sabbath, on the other.[20]

The conflict between the above approaches might be the result of the time and circumstances in which these respective groups were composing their literature. *Jubilees* and the Qumran literature were composed during Temple times, whereas rabbinic literature crystallized and was formalized in the Post-Temple period. Further on in this chapter I shall attempt to substantiate the thesis that the tannaitic conception of *zelem* was a response to the destruction of the Temple. The Rabbis propounded the idea that in the wake of the Temple's destruction, humankind – created in the Divine image – had become the locus of sanctity. Explained in terms of image as presence, *zelem Elohim* was a substitute for the Temple that lay in ruins and the Divine Presence which had disappeared. This claim derives from midrashic and Talmudic sources in which the Rabbis express this kind of transition, both explicitly and implicitly. Further support for this lies in the significant attention paid to Imago Dei *in* tannaitic literature beginning in the Yavneh generation as expressed in both aggadic statements and particularly in the concretization of the *zelem* theosophy in numerous halakhot, as against the absence of this conception in Second Temple literature. These matters are dealt with in Sections III and IV.

II. FROM TEMPLE TO HUMANITY

R. Abin's statement in *Yerushalmi Ketuvot*, that the Holy One blessed be He desires procreation more than He desires the Temple, has another aspect too. If indeed it is explained in light of the *zelem* theosophy and the concept of image as presence, then it follows that God prefers the procreation of mankind over the Temple because He prefers His images, which expand in number, over the restricted place designated for him in the Holy of Holies between the cherubim. According to this understanding, R. Abin's comments express a substantive transition in the "focal point of holiness." Holiness is transferred from the holy site, the Temple, to the human being – to every human being.[21]

An additional, moderate version of this development is discernible in the following passage from *Mekhilta de-Rabbi Ishmael*, *ba-Hodesh* 11:

[20] With regard to the Garden of Eden, Talmudic literature likewise presents a position opposed to that of the *Book of Jubilees*, Adam and Eve had sexual relations in the Garden of Eden. See *Genesis Rabbah* 8 and *b. Yeb* 63a; and cf. Anderson, "Garden of Eden," who offers another explanation for their different approaches.

[21] See Hirshman, "Focuses," 112.

"That your nakedness be not uncovered upon it" (Exod 20:23). You are not allowed to take large steps on it [the altar], but you may take big steps in the Temple and in the Holy of Holies.

For the following argument might have been advanced: If on the altar, which is of lesser importance, it is forbidden to take big steps, it is but logical that in the Temple and the Holy of Holies, which are of greater importance, it should be forbidden to take big steps. Therefore Scripture says: "that your nakedness be not uncovered on it" – on it you are not allowed to take big steps, but you may take big steps in the Temple and even in the Holy of Holies.

Behold you can make an *a fortiori* (*kal vehomer*) argument: Just as the stones of the altar have no knowledge to distinguish good from bad, yet God said that you should not act toward them in an insulting manner, all the more so your neighbor, who is similar to [or: in the image of] He who spoke and the world came into being, all the more so that you not act in a insulting disgraceful manner toward him. "That your nakedness be not uncovered on it."

The beginning of this homily explains the reason given by the Torah for the prohibition to "ascend my altar by steps." The Torah prohibited the exposure of one's genitalia on the altar, including on the ramp leading up to it; hence the priest was required to walk heel on toe, one small step after another, so that he would not be exposed.[22]

The second stage of the homily focuses on the word "on it," inferring that it is only on (or going up to) the altar that may one not tread normally, but that it is permitted to do so (i.e., with one's legs apart) elsewhere in the Temple, and even in the Holy of Holies. This inference is surprising, for even though the holiness of the Temple and of the Holy of Holies exceeds that of the altar, with respect to exposure of the private parts the priest is specifically warned to display respect regarding the latter, and not the former. The author was evidently aware of the surprise that this inference might provoke, and hence continues, in the third part of the homily, to add: "For the following argument might have been advanced: If on the altar, which is of lesser importance, it is forbidden to take big steps, it is but logical that in the Temple and the Holy of Holies, which are of greater importance, it should be forbidden to take big steps. Therefore Scripture says: 'That your nakedness be not uncovered on it.' 'On it' you are not allowed to take big steps, but you may take big steps in the Temple, and even in the Holy of Holies." The final part of the homily deals with the *a fortiori* exposition based upon its previous stages. This is our main concern. The altar was the epicenter of the entire Temple ritual (bringing of sacrifices), and in tannaitic sources it symbolizes the dwelling place of God himself.[23] But in this part of the homily it is referred to as "stones

[22] Regarding the garments worn during the rabbinic age (which created the possibility of exposing the intimate parts underneath them) see Krauss, *The Antiquity of the Talmud*, vol. II, Pt. 2, 70 ff. On the undergarments, see ibid., 178–179, 181. On the fact that the genitals were not normally covered by trousers, see *t. Ber* 2.6 (p. 45). Even though the priest was usually wearing trousers, e.g., *m. Yom* 7.5, these were not generally defined as regular clothing, see *t. Ned* 4.3. See Krauss, ibid, 213–217.

[23] See, e.g., *m. Suk* 4.5.

which have no understanding." Man, on the other hand, is depicted as one who was made in the "image of He who spoke and the world came into being."[24]

In its totality, this homily was intended to indicate the primacy of the human being over the Temple, humans being preferred by reason of having been created in the image of God.[25] Despite the great holiness generally accorded to the Temple, the dwelling place of God, the author maintains in a radical fashion that God prefers human beings who are created in his image.[26]

A striking expression of this development, albeit without use of the terms *zelem* or *demut*, appears in the following famous passage from *Avot de-Rabbi Nathan:*

> Once Rabban Yohanan b. Zakkai was leaving Jerusalem and Rabbi Joshua was walking after him, and he saw the Temple in ruins. Rabbi Joshua cried out, "Woe to us, for the place where atonement was made for Israel's lies in ruins!" Rabbi Yohanan responded, "My son, do not grieve, for we have another form of atonement that is like it. And what is it? Acts of loving kindness, as it is said: 'I desire loving kindness and not sacrifice.'" (Hosea 6:6)[27]

This paragraph states in unequivocal terms that after the destruction of the Temple the focus of sanctity was transferred from the Temple to man. The human being replaces the Temple, and henceforth humanity is the subject of acts that atone for Israel's sins. Rabban Yohanan b. Zakkai stresses that this atonement is "like it." The wording in *Avot de-Rabbi Nathan*, Version A, is even more extreme: "We have another atonement in its place."[28] As distinct from the passage in *Mekhilta de-Rabbi Ishmael* discussed earlier, this passage does not mention the *zelem*, but it would seem that, to the extent that it applies to the change in the focus of sanctity, the affinity between the paragraphs is clear.[29] The continuation of this exchange between R. Yohanan b. Zakkai and R. Joshua, as presented further on in *Avot de-Rabbi Nathan*, reflects a similar transition:

> For we have found that Daniel, the man greatly beloved, would engage in acts of loving kindness. And what were the acts of loving-kindness that Daniel would perform? If you were to say that he offered whole burnt-offerings and sacrifices in Babylonia, behold the verse says, "Take care not to offer burnt offerings in any place you like" (Deut 12:13). . . .

24 See *Mekhilta de-Rabbi, ba-Hodesh* 11 (p. 291), and compare the different versions. The words *dimyono* appears once in the Bible, in Ps 17:12: "Like a lion that is greedy of his prey" where its meaning is "comparable to," "like." It should be noted that the term *dimyon* does not appear in tannaitic literature, including early tannaitic midrashim. *Dimyon* in the sense of "imaginative faculty" or a mental state (*phantasia imaginatio*) originated in the medieval period.

25 The terms *zelem* ("image") and *demut* ("likeness") are synonymous in rabbinic literature.

26 Compare this to the homily of R. Yohanan b. Zakkai in *Mekhilta de-Rabbi Ishmael, ba-Hodesh* 11 (p. 244).

27 *Avot de-Rabbi Nathan*, Version A, 4 (pp. 34–35). Compare the wording in Version B, 8 (p. 75).

28 ibid

29 Some scholars assert that R. Yohanan b. Zakkai was a priest (based on his words in *t. Parah* 4.5; see Safrai, "New Perspectives," 342–343).

Rather, what were the acts of loving-kindness in which he engaged? He would attend to the bride's needs and cause her to rejoice, he would escort the dead, he would give money to the poor, and he would pray three times a day and his prayer would be graciously accepted, as it says, "When Daniel learned that it had been put in writing, he went to his house, in whose upper chamber he had windows facing Jerusalem, and three times a day he knelt down, prayed and made confession to his God." (Daniel 6:11)[30]

There are considerable defects in this passage, as have been noted by a number of scholars.[31] For example, what is the connection between offering "whole burnt offerings and sacrifices in Babylonia" and "acts of loving kindness"? And how is prayer relevant in this particular context?[32] Menahem Kister offered a solution to these problems, explaining the evolution of this tradition. Without directly discussing his proposal, I will note that this source clearly reflects the tendency to shift the focus of holiness from Temple-based ritual to acts of loving-kindness.[33] Kister rightly cites a paragraph of Ben Sira (35 [32]: 1–7) as an early example of the notion of loving-kindness as a substitute for Temple worship, all based on the prophetic doctrine. He further adds that it is obvious that these substitutes resulted from the absence of the place of atonement. While some of them were considered as seminal values, and perhaps even as means of atonement during Temple times, it was only the destruction of the Temple that elevated them (in Pharasaic Judaism) to the level of replacements for the sacrifices.[34]

Another source which may attest to the development under discussion appears in *Mekhilta de-Rabbi Ishmael*:

"When the ram's horn sounds a long blast they may go up on the mountain" (Exod 19:13). After the horn has given forth a prolonged sound, everyone was permitted to go up to the mountain. R. Jose says: From here they said: A person's place doesn't honor him, rather he honors his place. So long as the Divine Presence (*shekhinah*) was on the mountain, "whoever touches the mountain shall surely die." After the Divine Presence departed, all were permitted to go up to the mountain.[35]

This homily deals with the restrictions imposed against breaking through the barriers in an attempt to ascend Mt. Sinai during the three days preceding the Revelation (Exod 19:12–13). Once the trumpet is sounded, signaling the termination of the theophany, God's departure from the mountain and His return to the heavens, the people are permitted to ascend the mountain. R. Jose explanation of this verse alludes to the immanent sanctity of sites and places. His

30 A*vot de-Rabbi Nathan*, Version A, 4 (p. 21).

31 See Kister, *Avot de-Rabbi Nathan*, 186; see Schechter's note in his own edition, 21, n. 40.

32 Kister, *Avot de-Rabbi Nathan*, 186.

33 As well as to the study and preservation of Torah. On the distinction between the study of Torah and the preservation of Torah as substitutes for *Avodah* (= Temple Ritual), see Kister, *Avot de-Rabbi Nathan*, 187, n. 354.

34 Ibid., 187, n. 354.

35 *Mekhilta de-Rabbi Ishmael, ba-Hodesh* 3 (pp. 214–215); see parallels in *Mekhilta de-Rashbi, Yitro* 19 (p. 141), and *b. Ta'an* 21a.

exegesis begins with the assertion that a person's honor derives neither from the power nor the stature of the holy place, but rather, to the contrary, man himself endows a place with sanctity – "he honors his place." For R. Jose, the word "place" (*makom*) refers to an earthly site of some importance. Presumably, this homily refers to the social dimension and veneration in which a person is held by virtue of his social place; his words imply the opposite of another dictum, expressing the accepted convention that a person is honored by the place in which he finds himself. For example, in *Canticles Rabbah*, "They gave R. Judah the honor [of speaking] because he belonged to the place; not because he was the most learned of them, but because a man's place confers honor upon him."[36] While R. Jose's statement in and of itself is generalized and may refer to any place, and not strictly to holy sites, his analogy to the Divine Presence indicates that he is also referring to holy sites such as sanctuaries, synagogues, or other ritual locations, and perhaps even to the Temple. Important and even holy sites do not confer their importance on the human beings who come to them. Rather, the man who comes there imbues them with his immanent honor, that is, his dignity.

It is noteworthy that there is a certain discord between the exegesis offered on the words "When the ram's horn sounds a long blast" and the conclusion derived from it ("from here they said . . . ."). The homily emphasizes that "honor" as mentioned in the verse intimates that "the honor" (or holiness) is not immanent to a place, even if it once hosted the Divine Presence.[37] It thus conveys a theological conception, already emphasized in the Bible, whereby Mt. Sinai (or any other place) did not become a holy site by virtue of its having temporarily housed God.[38] In other words, holiness does not inhere in physical places. The conclusion of the homily ("from here they said . . . ") turns the emphasis from the contention that holiness cannot ensconce itself in places where the Divine Presence rested, to the claim that the place does not honor the person located there, but rather it is the presence, divine or human, that honors the place where it is located. This switch in emphasis demonstrates the conclusion drawn from the departure of the Divine Presence from Mt. Sinai. Places are neither honored, nor holy; they become important or (temporarily) sanctified by the presence of a holy source, be it human or divine.

Conceivably, the reliance here on the Divine departure from Mt. Sinai alludes to another dispute. The homily may not only be expressing social criticism

[36] *Shir ha-Shirim Rabbah* 2 (5) 3 (p. 106); compare *b. Ta'an* 21b.

[37] Compare to comments of R. Jose, *b. Suk* 5a.

[38] Conceivably, this homily also alludes to the idea that the choice of Mt. Sinai was not the result of its possessing any inherent sanctity, to the extent that it did not even become sanctified by virtue of its being the location of the unique occurrence of the theophany. Compare this conception to that of *Jubilees* 4:26: "For the Lord has four places on the earth, the Garden of Eden, and the Mount of the East, and this mountain on which thou art this day, Mount Sinai, and Mount Zion (which) will be sanctified in the new creation for a sanctification of the earth; through it will the earth be sanctified from all (its) guilt and its uncleanness throughout the generations of the world."

(i.e., the rejection of honor and the endorsement of dignity), but may also allude to the relationship between honor, that is, holiness of *places* – *inter alia*, the Temple – and *human* dignity. Again, taking into consideration the historical context of the homily, its conclusion should not be understood as limited to an exegetical observation on the sanctity of Mt. Sinai. Though referring to Mt. Sinai, its focus is elsewhere, closer in time and in place to the world of its author – namely, that place in which there had been the Divine Presence and from which it departed: the Temple that had been destroyed.[39] Thus, the homily reflects a development in the epicenter of holiness reminiscent of the conception alluded to in the homilies cited above, particularly in that on the verse, "you shall not uncover your nakedness thereon." Again, the dignity, that is, holiness, of mankind takes priority over the physicality of the Temple (from which the Divine Presence has departed); this priority is expressed in the analogy between the Shekhinah and mankind. Just as the Divine Presence honors the place where it dwells (and the place does not, and cannot, receive its own independent holiness), so too human beings bring honor to their physical location.

Another source that contrasts the sanctity of the Temple with the dignity accorded to human beings, again without reference to the *zelem* theosophy, is the following passage from *Tosefta Yoma*:

It once happened that two were evenly placed as they ran up the ramp [going to the altar]. And when one of them pushed his fellow and came first within four cubits of the altar, the other took a knife and thrust it into [the other's] heart.

R. Zaddok stood on the steps of the hall and said: Hear me, our brothers of the house of Israel! Behold it says: "If one be found slain . . . the elders and judges shall come forth and measure . . ." (Deut 22:1–2). Come and measure! On whose behalf shall we offer the heifer [whose neck is to be broken]: on behalf of the Sanctuary or on behalf of the Temple Courts?

All the people burst out weeping.

Afterwards, the father of the young man came and found him still in convulsions. He said: Our brothers, May I be your atonement for you. His son is still in convulsions and the knife has not become impure.

[His remark] comes to teach you that the impurity of the knife was of greater concern to them than the shedding of blood.

Thus is it also said: "Moreover Manasseh shed innocent blood very much, till he had filled Jerusalem from one end to another" (2 Kgs 21:16). From here they said: because of the sin of bloodshed the Divine Presence departed and the Temple was desecrated.[40]

[39] On the departure of the Divine Presence from the Temple, see *b. Rosh Hashanah* 31a. See also *Lam Rabbati, Petikhta* 24 (13a) (Buber, p. 24). According to another prevalent midrashic conception, the Divine Presence did not ascend to Heaven, going rather into Exile with the Jewish people. See, e.g., *Mekhilta de-Rabbi Ishmael, Pisha*, 51–52. The common element in the two traditions is that it did not remain in the destroyed Temple. See Spiegel, "Exile of Shekhina," 348–353; Urbach, *The Sages*, 54–55.

[40] *Tosefta, Kippurim* (Lieberman), 1.12, pp. 224–225. Compare to the version appearing in the baraita, *b. Yom* 23a; compare also to *m. Yoma* 2:2.

This incident sharply depicts the value of the human being, embedded in the prohibition of bloodshed, in contrast with the importance ascribed to Temple ritual and the matters of purity involved therein.[41] Two priests are competing for the privilege of removing the ashes from the altar in the morning (*terumat ha-deshen)*. They arrive simultaneously at the ramp of the altar and, overcome by his passionate desire to serve in the Temple, one of them pushed the other and wins. The loser, overcome with frustration, took a knife and plunged it into the winner's heart. As we later learn, this knife was one designated for slaying the sacrificial animals. R. Zaddok, himself a priest, "stands on the stairs of the hall," the place from which the priests bless the people (i.e., inside the Temple) and rhetorically asks "for whom should we bring the heifer"? The heifer ritual (see Deut 21 and *m. Sotah* 9.5) is intended to atone for the residents of the town in closest proximity to a slain person, when the killer is not identified. R. Zaddok asks the rhetorical and ironical question – because in this case the killer's identity is crystal clear – intentionally making a "mistaken" use of the law, because it enables him to extend the culpability for the murder from the murderer to the public as a whole. Furthermore, his rhetoric extends the guilt for the bloodshed to the priests in their entirety (the Hall) and even to the entire nation, who would be found in the "Temple Courts."

For R. Zaddok, the murder cannot be divorced from the historical – spiritual context in which it occurred: a context which permitted it, and is, therefore, responsible for it. R. Zaddok exploits the event to accentuate the warped value system that guides the community and its leaders: a system in which the Temple ritual is of primary importance, whereas human life is secondary. The public as a whole acknowledges its guilt and "all those burst out after him in weeping."

The conflict between the sanctity of human life and the status of the Temple ritual is further sharpened when the slain priest's father appears on the scene. He was not present at the event, nor did he hear R. Zaddok's words: he arrives at the Temple, sees the weeping crowd and his son hovering between life and death, and immediately declares: "Our brothers, may I be your atonement." His son is still in convulsions and the knife has not become impure. The father thanks the community for participating in his sorrow ("May I be your atonement") but quickly directs their attention to what he regards as the critical issue: his concern about defiling the knife. One can sense his relief when he discovers that the knife has not come into contact with a dead body. The knife must immediately be removed from his son's body to prevent its defilement together with his son's death. Here the callousness and moral perversion reach their peak. In the father's eyes, the bloodshed and moral outrage involved pale in comparison with the potential threat of Temple impurity. From his perspective, the "blood crying for atonement" is nothing more than a defiling "stain" which endangers the Sanctuary. As Frankel poignantly describes it: "The murderer . . . made the holy vessel into a tool of murder; the father wants to go back and make the tool of

[41] This passage was discussed at length by Fraenkel, "Hermeneutical Problems," 159–163. The following discussion is partially based on his analysis and insights.

murder into a holy vessel."[42] The anonymous narrator ironically concludes, "[His remark] comes to teach you that the impurity of the knife was of greater concern to them than the shedding of blood." The father's words do not represent his own personal idiosyncrasy; they reflect the prevalent view among the people, one that is scathingly decried by the narrator.

This appalling story starkly embodies the conception emerging from the sources surveyed above: it critiques the Temple ritual as the highest expression of holiness, elevating human beings as a preferred focus of holiness. Hence the story itself concludes with the statement that "From here they said that: for the offense of bloodshed the Divine Presence ascended [i.e., departed] and the Temple was defiled."[43] The departure of the Divine Presence is not the result of impurity, that is, of a defect in the ritual worship; to the contrary, it is the result of moral depravity and contempt for human life.[44]

Another example that stresses the supreme value of human life in comparison with the Temple may be implied in the above-discussed aphorism of Hillel: "They said of Hillel the Elder that when he was at the *Simhat Beit ha-Sho'evah* he said thus: If I am here, all is here; if I am not here, who is here?"[45] Like other similar statements by Hillel,[46] this statement is intentionally enigmatic, and I am unable to explain it completely. David Flusser correctly suggests that it reflects a supreme sense of self-worth, and further noted the affinity of this statement to Hillel's notion of *zelem* present in other statements attributed to him.[47] Its setting is the Temple, the place in which God dwells, at the festival of Water Drawing, in which His Presence was especially manifest.[48] It seems to hint, not only at Hillel's supreme sense of self-worth (as per Flusser), but also a dimension of self-deification: The word "All" (*hakol*) apparently refers to God Himself; hence I have translated it as "the All" rather than as "everyone," which would make it seem to refer to human beings.[49] Flusser noted that Hillel's statement refer not only to himself, but to all men created in God's image. Thus, the statement indicates a preference for God's presence in man over God's presence in the Temple.

[42] Ibid., 162–163.

[43] Regarding the phrase: "From here they say," see Bacher, *Traditions*, 171–192; Epstein, *Introduction*, 728 ff; see also Kahana, "The School of Rabbi," 71.

[44] On the connection between bloodshed and the departure of the Divine Presence, generally referred to in the context of an affront to the Divine Image, see Chapter 7.II.

[45] *b. Suk* 55a; compare *y. Suk* 5.4 (55b); *Avot de-Rabbi Nathan*, Version A, 12 (p. 55) and Version B, 27; see Kister, *Avot de-Rabbi Nathan*, 192–193, 377–378. For a detailed analysis of this passage, see Chapter 6.II.4.

[46] *b. Suk* 53a; *Avot de-Rabbi Nathan*, Version A, 27 (p. 55); *y. Suk* 4.5 (55b); *t. Suk* 4.3 (Lieberman ed., p. 198); *Mekhilta de-Rabbi*, *ba-Hodesh* 11 (p. 243).

[47] See Flusser, "Hillel," and following him, Knohl, "Kingdom of Heaven"; compare Rashi's interpretation, *b. Suk*. 53a.

[48] *m. Suk* 5.1–4 (esp. Mishnah 4); see *y. Suk* 5.7 ibid., 1 (55a): "Rabbi Joshua b. Levi said: Why was it called the House of the Water Drawing? Because from there they drew from the Divine Spirit." See Fox, "Drawing."

[49] See earlier Chapter 6.II.4 for detailed discussion, see Lorberbaum, *zelem*, 315, n. 126.

Assuming the authenticity of the ascription of this statement to Hillel, it follows that the shift in the epicenter of sanctity from the Temple to the human being preceded the Temple's destruction. It is nonetheless clear that the elevation of humanity, created in God's Image, to the focal point of holiness would have been reinforced after the destruction of the Temple, and become even more prevalent among the Rabbis during the post-Temple generation. Although the idea may not have been altogether new, in the post-Destruction tannaitic tradition, which was to a large degree a continuation of the Hillelite tradition, it developed and became a central tenet of religious thought. I will deal with this subject in greater depth later.

The last few passages that I have discussed here make no mention of the *zelem* theosophy. These passages, in a variety of contexts, attest to the value of humankind in contrast with that of the Temple and its ritual worship, stressing the preeminence of the former over the latter. These sources may be supplemented by a statement of R. Abin in *Yerushalmi Ketuvot*, explaining God's preference for procreation over Temple worship, implying, as I have interpreted it, that God prefers His presence in human beings who are created in His image over His presence in the Temple. While it is possible to explain some of these sources without connecting them with the idea of *zelem Elohim*,[50] it is difficult to ignore the fact that the idea of Imago Dei was a widely accepted principle in tannaitic literature indicative of man's value and preeminence.

According to this proposal, the same thought structure may be broadened to combine the oft-referred-to association in tannaitic literature among procreation, the Temple, the Garden of Eden, and the Sabbath. The underlying conceptual basis binding all of these together is the *zelem* conception and its ideational outgrowth in the proliferation of the image. Here, too, one can discern the implied recognition of man's superior status to that of the Temple. Whereas according to the *Book of Jubilees* and the Qumran writings the Temple is the exclusive focus of sanctity to which man pays homage in order to worship the Creator (hence procreation is disconnected from it), the intuition evinced in the writings of the Sages is that the Temple and the Shabbat (as well as the Garden of Eden) are a kind of framework or basis for the proliferation of humanity, created and subsequently born in God's image and likeness.

III. THE RISE OF THE IDEA OF IMAGO DEI IN THE YAVNEH GENERATION

Those groups of halakhah that were formulated in tannaitic literature in light of the notion of creation in Imago Dei were primarily an innovation of those Rabbis who lived after the Destruction of the Temple. As noted earlier, the formulations of

[50] On the elevation of the value of "man" in tannaitic literature and its transformation into a key principle in interpretation of the halakhah in matters pertaining to man, see Halbertal, 22–33; Alon, *History*, 1: 31; Urbach, "The Jews"; Sussman, "History of the Halakhah," 73, n. 238.

judicial execution found in the Mishnah have no basis in Biblical or post-Biblical sources. The modes of execution referred to in pre-tannaitic literature are completely different. Outright opposition to capital punishment first appears in the words of R. Akiva and R. Tarfon in *Mishnah Makkot*. The substitutions of "an eye for an eye" by monetary compensation and of the punishment of *karet* (Divinely-imposed death) by flagellation also seem to have been innovations of that school. And, although tannaitic sources ascribe the earliest discussions of procreation to the houses of Hillel and Shammai, Rabbi Akiva and his students greatly expanded upon them. In brief, tannaitic sources present the *zelem* theosophy and its applications as doctrines of R. Akiva, his circle of colleagues, and of his disciples: Ben Azzai, R. Eleazar b. Azariah, R. Jacob, R. Meir, R. Shimon b. Yohai, and others.

This approach seems to have been rejected by R. Eliezer b. Hyrcanus. In many sources containing halakhot connected to the idea of Imago Dei we find the opposing opinion of R. Eliezer, whose rejection of the *zelem* theosophy emerges both in his aggadic statements and in his halakhic rulings.[51] Examination of even a partial list of these disputes enables us to discern two basic approaches: R. Eliezer opposes the view of the other Rabbis regarding the law of hanging, which was expounded by R. Meir in accordance with the idea of creation in God's image. Apparently, R. Eliezer was continuing the "early halakhah." R. Akiva and R. Tarfon express their opposition to capital punishment, whereas R. Eliezer, followed by R. Shimeon b. Gamliel, argues that murderers should be executed.[52] The Sages (continuing in R. Akiva's tradition) contend that an "eye for an eye" refers to monetary compensation, whereas R. Eliezer's holds that "an eye for eye" is to be understood literally. R. Eliezer likewise argues against the other Rabbis regarding the laws of procreation, which according to them are derived from the idea of creation in the Image.

Ostensibly, R. Eliezer's halakhic decisions attest to his tendency to adhere to the straightforward, literal meaning of Scripture, and are not necessarily indicative of principled opposition to the idea of creation in the Divine image. However, as shown in the discussions in Chapter 7, Section I and Chapter 8, Section IV, statements ascribed to him in the aggadah imply his reservations regarding the formulation of this concept by R. Akiva and his colleagues.[53]

[51] Or there are other tannaim, known as bringing traditions in his name, who dispute the point.

[52] In my discussion I surmised that R. Eliezer was not a partner to the formation of the criminal procedure in the Mishnah and in the other identical or complementary tannaitic sources, because this procedure precludes any possibility of capital punishment. Here we may suggest the possibility raised by Rosenthal, "Tradition and Innovation" 338, qualifying his thesis regarding the paths of Beit Shammai and R. Eliezer (although not totally rejected by him), that once the halakhah was codified according to Beit Hillel, "he forgot the halakhot of Beit Shammai and R. Eliezer, at least those which manifestly violated the principled approaches of Beit Hillel" (see Ben Shalom, *Beit Shammai*, 273–276).

[53] See also Knohl, "Kingdom of Heaven," 25. On R. Eliezer's adherence to the literal meaning of Scripture, see Gilat, *Rabbi Eliezer*, Chapter 2 (esp. p. 45). However, Rosenthal pointed out "Tradition and Innovation," 321–323 that Shammai, and R. Eliezer in his footsteps, did not

These findings indicate that the Sages of the Yavneh generation both accepted and refined the *zelem* theosophy, transforming it into a halakhic principle in whose light they reformulated central areas of halakhah.[54] As we have seen, the conception of Imago Dei in the iconic sense originated with Hillel the Elder. The rejection of the concept also apparently predates R. Eliezer. Talmudic sources attribute this opposition to Shammai. This is attested to in a baraita at *Bavli Eruvin* 13b, in which Beit Shammai and Beit Hillel debate the meaning of the creation of humanity:

Beit Shammai says: It would have been better for humanity not to have been created than to have been created.

Beit Hillel says: It was better for humanity to have been created than not to have been created."[55]

A number of scholars have commented that this dispute is rooted in the issue of man's creation in God's image, which was a point of contention between Shammai and Hillel. Following Shammai's approach, his later disciples deny the Divine presence in man. According to Shammai, human physical existence is lowly and ephemeral; hence the expression "this body" in the alienated language attributed to Shammai. It is diametrically opposed to the Divine transcendent state of being, and therefore "it would have been better for humanity not to have been created."[56] Beit Hillel, by contrast, was steeped in the iconic image tradition of their founder; hence they reject the Shammaite view, stating "It was better for humanity to have been created," a position which clearly flows from their conception of man as having been created in the Image. R. Akiva, regarded as the ideological successor to the Hillelic tradition, continues to elaborate on this notion,[57] whereas R. Eliezer, as is frequently the case, serves as the mouthpiece for the views of Shammai and his school.[58]

There is no way of conclusively proving that the sources attributing the dispute over creation in the Image to Hillel and Shammai are authentic. Ultimately, a period of hundreds of years separates them from the final editing of *Avot de-Rabbi Nathan* as well as from the editing of the other sources that touch upon this debate. Nonetheless, in the absence of proof to the contrary, in my view there is no reason to deny that these were the views of these two schools, especially when we take

refrain from expounding the Torah in an innovative manner. This conclusion supports our conclusion regarding R. Eliezer's theological conception that was opposed to that of R. Akiva.

54 The *zelem* theosophy plays a central role in divesting the rules of criminal procedure of any practical significance. These rules amount to a far reaching "legislative reform" and are the result of theoretical analysis in the *Beit Midrash*, an analysis which remained purely theoretical, given that the Sages had no jurisdiction to enforce them. In my view, the absence of powers of enforcement provided the Sages free reign in their formulation of a criminal proceeding founded on theosophic principles, without subjecting it to the balances dictated by social and practical constraints.

55 *b. Eruv* 13b.

56 See Knohl, "Kingdom of Heaven," 25–26.

57 Rosenthal, "Tradition and Innovation," 325.

58 Knohl, "Kingdom of Heaven"; Gilat, *R. Eliezer*.

into account their substantiation by numerous parallel sources.[59] Moreover, even if the attribution of the *zelem* theosophy to Hillel is only conjecture, the fact that Talmudic tradition regarded him as its original proponent (and Shammai as among its leading detractors) indicates its significance and importance in the Sages' world, especially for those who perpetuated Hillel's tradition.

If indeed Hillel and Shammai disputed the conception of Imago Dei, there emerges the following sequence of development: Hillel endorsed the idea of Imago Dei, endowing it with its iconic sense and making it one of the cornerstones of his world view. Shammai, on the other hand, staunchly opposed the idea. These conflicting views were passed down to their students, the House of Hillel and the House of Shammai, who apparently gave concrete expression to these ideas in their halakhot. Israel Knohl noted an example of this usage when he analyzed their dispute regarding acceptance of the Yoke of Heaven (*'ol malkhut shamayim*). An additional halakhic expression of the conflicting views is found, as we observed, in the dispute between Beit Shammai and Beit Hillel regarding the commandment of procreation. The ideas of Hillel and his school were transmitted to R. Akiva, "father of all the *Mishnayot*,"[60] to his school, and to his students. These Sages in turn further honed and deepened the doctrine, which primarily served as a catalyst in the development and reformulation of a number of halakhic rules. R. Eliezer, on the other hand, clung to Shammaitic doctrines, and contested both the viewpoint embedded in the *zelem* theosophy and the halakhot that R. Akiva and his colleagues derived therefrom. With the ascendance and predominance of the Hillelite tradition and its notion of Imago Dei, and its derivative halakhic implications, the tannaitic sources were slowly depleted of the opposing viewpoint and halakhic approaches of Shammai and R. Eliezer, until finally only a few relics of this viewpoint remained embedded in rabbinic literature.

IV. IMAGO DEI IN SECOND-TEMPLE LITERATURE

The centrality of Imago Dei in tannaitic thinking is striking in light of the rarity, perhaps even absence, of a similar notion in Second-Temple literature. Only rarely does humanity's creation in the Divine image figure in pre-tannaitic Jewish literature. In these limited appearances it assumes a clearly metaphorical character; furthermore, the meaning ascribed to it in Second-Temple sources differs fundamentally from its iconic sense found in tannaitic literature.[61]

[59] The approaches of Shammai and Beit Shammai regarding *zelem* are similar to the view that emerges from the Qumran writings. See Knohl, "Kingdom of Heaven," 21 ff. This affinity supplements other points of resemblance between Beit Shammai's approach and sectarian halakhah, as demonstrated by a number of scholars. See Sussman, "History of the Halakhah," n. 237. This may substantiate the ascription of this view to Shammai.

[60] In the words of Rosenthal, "Tradition and Innovation," 325.

[61] To the best of my knowledge, the only literary corpus remaining from the Second Temple that relates extensively to the issue of Image is that of Philo. However, his interpretation of this idea is far removed from the tannaitic conception. See, for now, Wolfson, *Philo*, I: 153, 249. It would

The Imago Dei conception is almost non-existent in the *Book of Jubilees*. In its description of the creation of humanity (Chapter 2), the book makes no mention at all of humanity having been created in the Divine image. While the author bases himself on Genesis 1:26–27 – he does mention that Adam was created as male and female, and that he "made him rule everything on earth" – no mention is made there of creation in the *zelem*. This "omission" cannot have been purely accidental.[62] The *zelem* theme does appear in the continuation of the story, in a verse paraphrasing Genesis 9:4–6:

> But you are not to eat animate beings with their spirit – with the blood – (because the vital force of all animate beings is in the blood) so that your blood with your vital forces may not be required from the hand of any man. From the hand of each one I will require the blood of man. The person who sheds the blood of man will have his blood shed by man because He made mankind in the image of the Lord.[63]

The appearance of *zelem* in this context is surprising, for one would have expected it to appear in its primary context, the description of man's creation, and not in one where it provides the basis for a normative inference. Evidently, *zelem* in this context is used as a figure of speech, based upon its context in Genesis 9:6.[64] No mention is made of it anywhere else in the *Book of Jubilees*.

Zelem is not mentioned at all in the Qumran literature.[65] Scholars have noted that the religious spirit imbued with this concept is alien to the religiosity and spirituality characteristic of the Qumran literature.[66]

appear that there was no real contact between the Sages and Philo, certainly not with regarding the issue of creation in the Image.

[62] *Jub* 2, see esp. 2:14 (ed. Vanderkaum, p. 11).

[63] *Jub* 6: 7–8 (ed. Vanderkaum, p. 38).

[64] *Book of Jubilees,* trans. J.C. Vanderkaum (Lovanii, 1989), p. 38, notes to Chapters 6, 8. However, cf. Vanderkaum, "Genesis in the Book of Jubilees," 314.

[65] The image of God is mentioned in the line dealing with the Sabbath Sacrifice Offering, 4Q405 [4QshirShabb] frags. 14–15, col I; Newsom *DJD* XL, pp. 307–393, pls. XXI–XXX; see also Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, vol. 2 (4Q274–11Q31), 830. It seems that in this paragraph there is no reference to man as an "image" of God, and that the term "image" used therein refers to God. See also, ibid., the phrase "effigies of living gods," frags. 19, p. 832. Regarding the hymns of the Sabbath Sacrifice, see Newsom, *Songs of Sabbath Sacrifice*, 1–2. Newsom's view is that this work apparently preceded the sect and was the product of priestly circles connected to the *Book of Jubilees*. Compare Dimant, "Sons of Heaven," 113, n. 38. See also B. Nitzan, *Qumran Prayer and Poetry*, 212–238. Another appearance of the phrase "in the image of [your] glory" appears in an additional text from Cave 4 known as "Words of the Luminaries," 4Q504 (4QDibHam), M. Bailett, *DJD* VII, 137–168, pls. XLIXX–LII. Assuming the veracity of the supplements to this text, this is the only case in the Qumran literature in which man is depicted as having been created in the image of God. However, scholars have noted that this text too is not sectarian. Regarding a sectarian text that alludes to the possibility of man being created in the image of angels, see Collins, "In the Likeness of the Angels."

[66] See, e.g., Knohl, "Kingdom of Heaven."

Neither does Josephus make any mention of Imago Dei in his writings, even in the description of the creation of the world and humanity at the beginning of his work *Antiquities of the Jews*. Josephus might have been expected to include the *zelem* idea in *Antiquities* 1.32–34, but in his description of man's creation (which is somewhat laconic), he omits the entire matter, apparently intentionally: "The sixth day he created the race of four-footed creatures, making them male and female; on this day he also formed man [...]." After speaking about the seventh day, he begins to expound on the Creation, describing the formation of man in these terms: "God fashioned man by taking dust from the earth and instilled into him spirit and a soul. This man was called Adam, which in Hebrew signifies one that is red, because he was formed out of red earth, compounded together; for such is the color of true virgin soil."[67] Further on, Josephus continues to talk of man's creation from the ground: "Meanwhile Adam, the man first formed out of the earth, after Abel was slaughtered and the consequent flight of his murdered Cain, longed for children."[68] Josephus bases his description primarily on Genesis 2, specifically verse 7, disregarding, no doubt intentionally, the *zelem* topic, humanity's dominion over the creation, and the matter of procreation, all of which are emphasized in the description of humanity's creation in Genesis 1.

In the Apocrypha and Pseudepigrapha the idea of Imago Dei is mentioned only occasionally, and invariably in a metaphoric sense which is quite remote from the literal meaning of Scripture, as well as from the meaning ascribed to it in early rabbinic literature. The issue of *zelem* is mentioned in passing in *The Wisdom of Solomon*, where it also bears a strikingly metaphoric nature: "But God created man for immortality, and made him an image of his own proper being; it was through the devil's envy that Death entered into the cosmic order and they who are his own experience him."[69] The *zelem* theme in this paragraph does not relate to any specific aspect of man, but rather to his potential for immortality, a potentiality that was extinguished by Satan who incited man to sin. The *zelem* is unrelated to man's body or to his concrete existence. The description of man's creation in *The Wisdom of Solomon* derives primarily from the description of the creation in Genesis 2:7.[70] In Chapter 7 the

67 *Ant* 1:32 (Loeb Classical Library, p. 17) and Levison, *Adam*, 101 ff.

68 *Ant* 1:67 (ibid., 31).

69 *Wisdom of Solomon* 2:23–24 (trans. D. Winston, p. 112); compare to Philo, "On the Creation of the World," 69.

70 See, e.g., ibid., 7:1–2. Conceivably, the critique of the idol ritual appearing in Chapter 15 is alluded to precisely by the negation of the corporeal aspect of the image issue. See *Wisdom of Solomon* 15:13: "For this man knows more than any other that he is doing wrong, fabricating from earthen stuff frail vessels and carved images." This verse is a continuation of what was said previously "to lust for the unbreathing form of a dead image [...] with misspent toil he molds a nothing-god out of the same clay, he who but shortly before came into being out of the earth and shortly after returns whence he was taken." There is an allusion to the precise opposite of the image: man who is created out of dust makes an image which is made out of

author offers what may conceivably be read, but only by way of allusion and implication, as a speculative interpretation of the *zelem Elohim* concept, identifying it with the *Logos*/Wisdom emanating from God to the world and to humanity. Wisdom is from the glory of the Almighty,"[71] and is connected to "an image of His goodness."

Ben Sira refers to creation in the Divine image on one occasion alone:

The Lord from the earth created humankind, and makes each person return to earth again. Limited days of life he gives them, with power over all things else on earth. He endows them with a strength that befits them; in God's own image he made them. He puts the fear of humans in all flesh, and allows them power over beasts and birds.[72]

Hence, according to Ben Sira, creation in the Divine image is connected exclusively with man's sovereignty, and nothing else. Even in the story of man's creation, elements from the description in Genesis 2 are interspersed with elements of Genesis 1.

Likewise in the *Testament of Naftali*, the *zelem* is mentioned on one occasion, and that only in passing and metaphorically:

And just as the potter knows his vessel and how much it contains, so also the Lord created the body in the image of the spirit, breathing [into it] the spirit according to the strength of the body ... For there is no creature or thought which the Lord does not know, as He created all human beings in His image. As a person's strength, so is his work; as his understanding so is his deed; as he plans so does he act; as is his heart so is his speech; as is his eye so is his sleep; as his soul, so is his speech – whether in the law of the Lord or in wicked deeds."[73]

The *zelem* is mentioned here only to stress Divine knowledge of man and his personality, and primarily to note his deficiencies. Apparently, the author of the *Testament* utilized the *zelem* concept in order to substantiate the doctrine of Divine providence in the world, particularly over humanity.[74]

dust. Chapter 15 of *Wisdom of Solomon* should be read together with Chapter 2: 23–24. See previous note, and cf. Levison, *Adam*, 49–62. Nevertheless, according to the author of *Wisdom of Solomon*, man has dominion over the world, a motif taken from the idea of *zelem* in Genesis. See ibid., 9:1.

[71] *Wisdom of Solomon* 7:24–27 (Winston, 184). On the connection drawn in the Middle Ages between Imago Dei and God's breath as a metaphor for the emanation from the celestial, see Lorberbaum, "Nahmanides' Kabbalah on *Zelem Elohim*."

[72] *Ben Sira* 17:1–4 (ed. Segal, p. 102); see *ad loc.* 19:16, p. 337.

[73] *Testament of Naftali* 2:2–6 (Charlesworth, *Pseudoepigrapha* 811).

[74] In *IV Ezra*, which was apparently written toward the end of the first century or the beginning of the second century CE, just one mention is made of "image": "But man, who has been formed by your hands, and is called your own image because he is made like you and for whose sake you have formed all things – have you also made him like the farmer's seed?" (*IV Ezra* 13:44; in Charlesworth, *Pseudepigrapha*, vol. I: 543, and ibid., 8:44). However this book was, as stated, composed after the Destruction.

The *zelem* theme also appears in the Slavonic Book of Enoch, but this particular composition does not concern us here, since it was probably composed after the Destruction. Some scholars

Against the absence or, better, the marginalization of the idea of Imago Dei in the Second-Temple literature, particularly in the literature created in the Land of Israel,[75] the prominence of this conception during the tannaitic period, beginning from the Yavneh generation, is particularly striking. This, too, reinforces the thesis that the *zelem* theosophy and its ideological and halakhic offshoots were a tannaitic response to the Destruction. Literature originating in Temple times, when the ritual proceeded in a regular manner, did not speak of humanity as being created in God's image, thereby positing divine's presence in man. Under these circumstances it is natural that the *zelem* theosophy, particularly in its iconic sense, would recede to the background or even disappear altogether. Such was not the case once the Temple had been destroyed and the location of the Divine Presence became a problem. It would then be natural for the *zelem* conception and the notion of image as presence to provide a solution to the problem (or difficulty) of the place of Divinity and that of the epicenter of holiness.[76]

postpone the date of its composition to the ninth century. See in Anderson's preface to the Charlesworth, *Pseudepigrapha* edition, vol. I: 94–98. The *zelem* is mentioned in *II Enoch* 44 (ibid., p. 170): "The Lord with his own two hands created mankind; in the facsimile of his own face. Both small and great the Lord created [them]. And whoever insults a person's face insults the face of a king, and treats the face of the Lord with repugnance. He who treats with contempt the face of any person treats the face of the Lord with contempt. He who expresses anger to any person without provocation will reap anger in the great judgment. He who spits on any person's face insultingly will reap the same at the Lord's great judgment."

In this paragraph the prohibition on harming a man is grounded in his being an image of God's face, which is clearly a gloss on Gen 9:6. It is noteworthy that in his description of man's creation (ibid.) 11:57–59; and see 2 Enoch (Charlesworth, *Pseudoepigrapha* p. 170). The *zelem* theme is mentioned briefly and rather obscurely ("the image knows how to speak"). The *zelem* theme also appears further on (17:1).

[75] In contrast with the other Second-Temple works, Philo mentions creation in the Divine Image on numerous occasions. However, his theoretical and interpretative approach is unrelated to the Palestinean literature, and especially not to the tannaitic literature.

[76] The idea of creation in God's image (Imago Dei) is connected to the idea of imitating God (*Imitatio Dei*) (see later in the Epilogue). The idea of *Imitatio Dei* is also absent from Second-Temple literature, although it too emerged as a major religious ideal in the tannaitic literature. The conception of the performance of commandments as *Imitatio Dei* is based on the idea of humanity as Imago Dei, and it is not by chance that neither of them appear in Second-Temple literature, but flourish in tannaitic literature, and in my view, again, as a response to the Destruction. The central religious ideal in *Jubilees* and the Qumran writings is the imitation of the angels and joining them in standing before God, where they praise and extol him. According to the Qumran conception, the community and its life style constitute a kind of earthly Sanctuary (which is a substitute for the Sanctuary that existed in their day in Jerusalem), where they serve in holiness. This place is analogous to the heavenly temple, and when performing their duties they imitate the angels. A similar parallel exists between the priest of the community in the future, and the angel serving in the inner sanctums of the divine sanctuary. This conception also figures in *Jubilees*; see the discussion in Dimant, "Sons of Heaven," 111–113. From a phenomenological perspective, however, I think that there is deep and conclusive difference between the religious ideal focused on standing before God as an angel serving in the celestial temple where he permanently sings God's praises and the

V. TRANSFORMATIONS IN THE FOCUS OF HOLINESS

The deflection of the focus of holiness from the holy site to human beings – the primacy conferred upon moral obligations and the "spiritual life" over the Temple and the ritual conducted therein – are not unique to Talmudic literature. As is well known, many of the prophets castigated the nation and its practices for what they regarded as the intolerable gap between their adherence to ritual and their moral depravation. For example, Isaiah proclaims:

To what purpose is the multitude of your sacrifices unto me? says the Lord: I am full of the burnt offerings of rams, and the fat of fed beasts; and I delight not in the blood of bullocks, or of lambs, or of he goats. When you come to appear before me, who has required this at your hand, to tread my courts: Bring no more vain oblations; incense is an abomination unto me [...] Wash you, make you clean; put away the evil of your doings from before mine eyes; cease to do evil; Learn to do well; seek judgment, relieve the oppressed, judge the fatherless, plead for the widow. (Isa 1:11–17)

Micah prophesies similarly:

Wherewith shall I come before the Lord, and bow myself before the high God? Shall I come before him with burnt offerings, with calves of a year old? [...] He has shown you, O man, what is good; and what the Lord requires of you: but to do justly, and to love mercy, and to walk humbly with your God. (Mic 6:6–8)

The transposition of the focus of holiness from the Temple and ritual to humanity or, even more so, to the community, already appears in a number of paragraphs in the Judean Desert Sect. In the *Community Rule* Scroll (*Serakh ha-Yahad*), we read the following:

5 When these things exist in Israel; the Community council shall be founded on truth, like an everlasting plantation,
6 A holy house for Israel and the foundation of the holy of holies for Aaron, true witnesses for the judgment and chosen by the will (of God) to atone for the land
7 And to render the wicked their retribution. It (the Community) will be the tested rampart, the precious cornerstone
8 whose foundations do not shake or tremble in their place.

conception of man as an image of God and imitating Him as a central religious goal. The two conceptions appear to be mutually exclusive. It is not by chance that the conception of religious worship in the Qumran writings and *Jubilees*, both compiled when the Temple was standing, constituting the source of holiness, bear the imprint of the Temple ritual and the idea of man standing before God. The Sages, on the other hand, formulated a religious conception after and in the wake of the Destruction. Consequently, they proposed the idea of *Imitatio Dei* which is divorced from the Temple and from the ritual conducted therein, and actually seems to serve as its replacement.

9 It will be the most holy dwelling for Aaron with total knowledge of the covenant of justice and in order to offer a pleasant aroma; and it will be a house of perfection and truth in Israel;
10 in order to establish a covenant in compliance with the everlasting laws. And these will be accepted in order to atone for the earth and to decide the judgment of the wicked.[77]

The above passage deals with the vocation of the *Yahad*, or "Community." The *Yahad* must divorce itself from the surrounding society and go to the desert. The Yahad is "founded on truth," like "an everlasting plantation." Its acts atone for the iniquities of its members and of the earth. The phrase "a holy house" (v. 6) refers to the Community in which holiness prevails and, conceivably, it subtly hints that the unity of its members constitutes a replacement of the Temple. The passage refers to two houses – the House of Israel ("a holy house") and the House of Aaron ("the foundation of the holy of holies") – reflecting the duality of the community structure and the superiority therein of the priestly class. This may refer to the future Temple ritual (when the "Community" becomes sovereign), but may also refer to priestly duties within the *Yahad* sect in the present, which are comparable to the bringing of sacrifices. According to this reading, the House of Aaron attains its total fulfillment precisely within the framework of the sect, and not in the Jerusalem Temple. The words "and chosen by the will [of God] to atone for the earth" (v. 6) and "these will be accepted in order to atone for the earth" (v. 10) teach us that, by force of its existence and the purity of its acts, the Community serves for the atonement of sins, and the activity of the Community serves as a metaphor for bringing sacrifices (v. 9).[78] Prayer and the ascetic life style are the atoning factor. These spiritual means are a voluntary gift sacrifice and even superior to them.[79]

A similar ideational trend may quite possibly be expressed in a rather obscure section of the Dead Sea Scrolls known as *4QFlorilegium* [4Q174]. This passage, which is a kind of gloss or interpretation of Nathan's prophecy to David in 2 Samuel 7:7–14, includes the enigmatic sentence "And he commanded to built for himself a temple of man, to offer him in it, before him the works of the thanksgiving/law (= *todah* or *torah*) . . . ."[80] This verse has been addressed extensively in scholarly literature. Some scholars suggest that the words ""he commanded to built for himself a temple of

[77] *Rule of the Community, 1QS*, Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, vol. 1, p. 89; Licht, *The Rule Scroll*, 179–180. The following analysis is based on Licht, ibid., 167–174.

[78] Licht points out that the "acceptance" referred to in v. 10 is meant in the Biblical sense, as used regarding sacrifices: i.e., that acts of atonement are as desirable and beneficial as sacrifices brought in accordance with the law. See Licht, ibid., 173.

[79] See ibid., 173.

[80] 4 Q174 (4QFlor) 4QFlorilegium, in J. M. Allegro, *DJD* V, 53–57, pls XIX-XX, 1 6–7. Cf. Garcia Martinez and Tigchelaar, *The Dead Sea Scrolls*, 353.

man" refers to a physical temple to be built by man (*mikdash adam*), in which the members of the sect (or people in general) will offer "works of thanksgiving" – in other words, sacrifices and real incense. Another group of scholars regard it as referring to a temple (in the present or future) comprising men ("temple of man") – that is, the Qumran community. The act of incense burning is none other than the "works of the law" (*torah*). The different readings depend on the identification of the word *todah/torah*, which is uncertain.[81] The works of the law would refer to the sanctified lifestyle of the members of the sect.[82] This point remains moot, and quite possibly the verse is intentionally ambiguous. At all events, if the latter interpretation is correct, then the import of the sentence in the *Florilegium* is similar to that in the *Rule Scroll* (1QS), the implied conception being the preference of the community, or more precisely, the *Yahad* over the Temple.[83]

A similar trend, albeit in a different context and mindset, appears in the words attributed to Jesus in the New Testament. In the Gospel According to John 22:19–23 we read:

> Jesus answered and said unto them: Destroy this temple, and in three days I will raise it up. Then said the Jews, Forty and six years was this temple in building, and wilt thou rear it up in three days? But he spoke of the temple of his body. When therefore he was risen from the dead, his disciples remembered that he had said this unto them; and they believed the scripture, and the word which Jesus had said.

Foreseeing his death (along with the destruction of the Temple) Jesus describes his bodily-being – when he will be resurrected after three days – which will serve as a replacement for the Temple. From the sanctuary which is in ruins, God's presence is transferred to Jesus' body. In the (Deutero-) Pauline epistles, which are based on the abovementioned statement of John, Jesus is depicted after his resurrection as being the body of God. The conception of the body as the substitute for the Temple is (similarly) alluded to in the epistles. For example, in 1 Corinthians 6:10–15: "Know you not that your bodies are the members of Christ [. . .] What? Know you not that your body is the temple of the Holy Ghost which is in you, which you have of God, and you are not your own?"[84]

[81] There is some uncertainty as to whether the word is *torah* in the sense of the law, or *todah* in the sense of thanks; In Hebrew, the letters *resh* and *dalet*, in *torah* and *todah*, respectively, may easily be confused.

[82] A decision on the precise meaning of the sentence would depend upon an analysis of the entire passage, which is beyond the scope of this work. For a detailed survey of the scholarship, see Wise, Florilegium.

[83] A similar direction regarding the perception of the Temple scroll is taken by Shemesh, "'The Place I Chose.'"

[84] See also Rom. 8:9; 12:4; Eph. 1:22–23; Col. 1:15–20. On the Pauline conception, see earlier in this book, Chapter 8.II.

The transposition of God's presence from the Temple to humanity was an integral part of similar developments in religious consciousness during Late Antiquity. Historians of the first centuries of the Common Era have shown that during this period the religious focus gradually moved from the "holy place" to the "holy person." Holy sites and other places of ritual became significantly less important in the religious world-view and sensitivity of those living at that time. Holy sites no longer served as a place for Divine revelation or for His abiding presence, being increasingly replaced by the holy person, in whom God revealed himself and with whom he wandered from place to place. This departure from the ancient doctrine was not the result of the destruction of temples or of holy places. Rather, according to these historians, it is rooted in deep-seated changes in the thought processes and sensitivities that gradually diminished the sanctity of sites in favor of the glorification of the holy man.[85] As stated, the developments generated by the doctrine of creation in God's image in the world of the Sages are indeed part of an overall religious-cultural trend of that time and environment – in the pagan surroundings, on the one hand, and among the sects that originated from the Jewish tradition during the Second Temple, on the other. Nonetheless, this general tendency should not blind us to its unique aspects. The *zelem* theosophy of the Sages did not simply transfer God's presence to the "holy man" who had unique divine characteristics, or to a heavenly figure that absorbs all of its devotees as its limbs. Nor is it limited to the members of a select and specially chosen group. The Sages' concept of creation in the Divine image applies to all who were created in God's image and likeness – in other words, to all of humankind.[86] Moreover, the radical, iconic-theurgic meaning assigned to it establishes a powerful connection between God and those created in his image, to the extent that almost any act done by man is regarded by the Sages as influencing God.[87]

The idea of Imago Dei, whose seeds first budded among the Pharisees during the Temple period (in Hillel and Hillel's school) gained tremendous momentum in wake of the Destruction. The timing of these developments was apparently not coincidental. Tannaitic speculation regarding the *zelem* conception, the manner of its development and the significance attached to it, may be understood as a response to God's departure from His sanctuary.

[85] See Brown, "The Holy Man"; and Brown, *The World of Antiquity*, 102. Brown contends that this phenomenon reached its fullest development during the fifth century CE. On the other hand, Smith takes the view that the phenomenon should be advanced to the centuries preceding the Common Era; see Smith, *Map is not Territory*, 186–187.

[86] Compare Hirshman, "Focuses."

[87] The Sages' (R. Akiva and his colleagues) concept of the commandments is based on the Biblical principle "You shall be holy, for I am holy" (Lev 19:2). The thrust of this principle is the imitation of God, based on the idea of humankind's creation in the Divine image. See the Epilogue below.

The idea of creation in *zelem Elohim* in the iconic-theurgic sense provided an effective (albeit not exclusive) solution to the profound religious crisis caused by the Destruction. God has left his dwelling, but has not abandoned the Land. To the contrary, in certain senses He was far closer, because of His presence in humanity created in His image.[88]

[88] On the Yavneh generation's response to the Destruction, see Aderet, *From Destruction to Restoration*, and for a survey on research and additional literature. As distinct from his assessment that the Destruction caused "the disappearance of the focus of sanctity from the Sages' world" (ibid., p. 446), the *zelem* conception in tannaitic literature, and the exceptional significance attached to it by the Yavneh generation, indicate that the focus of holiness had not disappeared, but was rather transferred from the Temple to humanity. The Destruction is indeed a convenient explanation for almost every change that occurred in the Jewish world in the transition from the world of the Temple to the world following its destruction. In truth, in a certain sense the Destruction was a central factor in the reconstruction of the Jewish-rabbinic world following the Destruction. See Sussman, "History of the Halakhah," 73, n. 238 and the extensive literature that he cites. The claim here, however, regarding the changed focus of holiness from Temple to Man, is different in two respects. First, as observed, the expression finds explicit expression in tannaitic statements. Second, the rise of the idea of *zelem* is connected to that of another idea – the exile of the Divine Presence together with Israel. Here too there is a genuine connection between the upper and lower worlds, which was also apparently a tannaitic innovation from the Post-Destruction period. See Spiegel, "Exile of the Shekhinah," 348.

Epilogue

The concept of man's creation in God's image – both in general, and specifically in tannaitic literature – constitutes a meeting point of a number of major issues. It integrates theological issues (relating to the conception of God) with anthropological ones (relating to the concept of man), both of which are fused by the conception of representation pertaining to the relations between God and Man – in other words, to the meaning of the image–*zelem* relationship. As we have observed throughout the course of this book, in Talmudic literature the issue of creation in the Divine image is not confined to the academic-theoretical dimension alone, but extends to practical-normative issues as well, both in the realm of law and society, and in the "religious"-ritualistic realm. Both legal and ritual matters are intertwined, forming an inseparable part of the subject.

The idea of creation in the image has clear delineating features, but within those boundaries there is a rich and complex ideological texture. The difficulties involved in the research of Talmudic literature are well known, particularly in light of its fragmented nature, but it is my hope that notwithstanding, I have succeeded in reconstructing a broad and comprehensive thought complex that underlies numerous sayings and homilies within this corpus, both halakhic and aggadic. This thought complex opens vistas for a renewed evaluation of a number of issues at the forefront of research of Jewish religion and Talmudic literature. These include: anthropomorphic expressions; the iconic conception and man as an icon of God; the relationship between theosophy and ritual, between theology and law, between aggadah and halakhah; and the theurgic dimension of halakhah.

Not infrequently, a new research thesis gives rise to new problems and even opens a new field of research, of broader horizons than its predecessors. Such a result indicates, not the deficiency of the thesis, but its advantages. The thought complex of man as an image of God in Talmudic literature offers new directions in the research of the subjects mentioned above and, simultaneously, raises new problems and subjects for discussion and research. In my closing

comments I wish to present some of these matters, a small part of which were mentioned in my earlier discussions, and to present some of my thoughts concerning them.

The first issue concerns the relation between the idea of the creation in God's Image and the prohibition on the cult of images. It is common knowledge that, from its inception and throughout its development, Jewish religion battled against the representation of God in images and, in so doing, imposed an absolute and categorical prohibition on any form of worship of His image.[1] Jewish tradition associates image worship with the gravest offense – idol worship. Already in ancient literature, Jewish and foreign, the Jewish tradition was identified with the aniconic world view.[2] The prevalent scholarly explanation for this prohibition, in both its Biblical and Talmudic formats, is that the God of Israel is abstract and elevated above any other form. As I have shown, this line of reasoning, which is ostensibly supported by Biblical verses, was used by modern scholars in their efforts to explain away anthropomorphisms in the Scriptures and from the Talmud, especially those sources that implied or apparently referred to God's image. This view was correctly refuted by other scholars, who asserted that this was not the rationale for the Biblical prohibition. Their reasoning was simple: both Biblical and post-Biblical sources including, as noted, the Talmud, depict God as having a form and an image. These scholars, among them Yehezkel Kaufmann, explained the prohibition of image worship as part of the classic tendency within Jewish religion, already manifest in the Bible and in all of its subsequent developments, to elevate God, and this tendency is inconsistent with His representation in wood and stone.[3]

The thought complex elaborated in this book intensifies the problem. In fact, the paradox is already evident in the Bible, and thereafter in the Talmud. On the one hand, both prohibit any kind of worship of God by way of images, but on the other hand man is described as an "Image of God" in the iconic sense. In Genesis – the declarative introduction to the entire Bible – the same God who prohibits his worship through means of images is described as having created an image of Himself and having endowed him with sovereignty and dominion over the entire creation.

Conceivably, these two central themes are interrelated. What initially appears as a paradox from the Biblical and Talmudic perspective, which negates any attribution of form and image to God, may in fact turn out to be a consistent and integrated outlook. The prohibition on worshipping God by means of stone and wooden images may derive from the fact that man himself is an image of God.

[1] Exod 2:4; 25, 31; Deut 5:8; 4:9-20; see Barasch, "Icon," 12; Guttmann, "The Second Commandment;" and see earlier, Chapter 3.II.

[2] For example, Hecataeus of Abdera wrote of Moses: "But he had not image whatsoever of the gods made for them being of the opinion that God is not in human form; rather the heaven that surround the earth is alone divine and rules the universe." See Diodorus, 40.3–4, according to Ludlum, "The God of Moses," 343. See there for discussion of this paragraph.

[3] Regarding this and other solutions, see references earlier in Chapter 2, n. 18.

If man is an image of God, if he is the manifestation of God's presence in the world, then he obviously cannot partake in the ritual worship of entities that are inferior to him. Worship of images assumes that the object of worship is elevated above its devotees. Such a ritual may then constitute a "desecration of the Name" in the sense that God, or more precisely His presence, worships His own image. This understanding becomes even sharper if we remember that the notion of man as an image of God, at least according to tannaitic literature, has theurgic significance. In the creation of man and in the commandment to be fruitful and multiply, God attempts to extend and augment himself. In this understanding, procreation is the antithesis of the creation and worship of stone and wooden images. True worship consists of drawing God's presence into the real images – human beings – and in guarding and nurturing them, and not in the creation of inferior reflections of them. The upshot of this conclusion is that the conception of man as an image of God implies a fundamental negation of God's representation in any other image.

This conception does not contradict the solution mentioned above, offered by other scholars, but it does highlight a different aspect of the problem. According to my proposition/suggestion, more than it is rooted in the transcendence of God, the prohibition of image ritual focuses on the elevated stature of man. In other words, even if the prohibition on worshiping God by way of his images is connected to the Divine Glory, in light of man's existence as an image of God, this prohibition is also derived from man's stature, which in turn devolves from the elevation of the Divine. Admittedly, this thesis is not explicated in the Torah, and to the best of my knowledge is not suggested (at least not explicitly) anywhere in the rabbinic literature, but it is implied in the thought complex that I have presented here.

Another issue is the connection of Imago Dei to other well-known issues in Talmudic literature, such as *Ma'aseh Bereshit* ("The Works of Creation"), *Ma'aseh Merkabah* ("The Works of the Chariot" – i.e., the nature of the Divine realm) and *Sitrei Arayot* ("The Secrets of Sexual Prohibitions"). These three issues are mentioned in the Mishnah, in the Tosefta, and in *Bavli Hagigah* (Chapter 2 in all of them) as the Sages' esoteric doctrine par excellence. According to the famous Mishnah in Hagigah:

One does not discuss prohibited sexual unions among three people; nor the Acts of Creation in the presence of two; nor the Divine Chariot before [even] one individual, unless he was a wise man and understood [through hints] on his own. Whoever gazes at [i.e., tries to know] the following four things, it would have been better had he never come into the world; viz.: What is above and what is beneath, what was before creation, and what will be afterwards [after all will be destroyed]. And whosoever is unconcerned for the honor of his Creator, it were better had he not come into the world.[4]

[4] *m. Hag* 2.1; *t. Hag* 2.7 (p. 234). On the possible interpretations of this Mishnah, see Halbertal, *Concealment and Revelation* (pp. 10–15); Halperin, *The Merkavah*; ibid., for additional literature.

The "Works of Creation" relates to the esoteric interpretation of the opening chapters of Genesis, dealing with creation of the world. The "works of the [Divine] Chariot" relates to the opening chapter of Ezekiel describing the Chariot of God.[5] "Prohibited sexual unions" includes the Biblical chapters dealing with incest prohibitions (primarily Leviticus 18). Due to the prohibition outlined in this Mishnah, the Sages refrained from expounding their understanding of these matters. It is clear that Talmudic literature altogether deals extremely sparsely with these issues. Commentators and philosophers, as well as scholars, have all tested their mettle in proposing varying ideas regarding the Sages' intention regarding "the Acts of Creation" and the "Divine Chariot," but whether they succeeded or not is a moot point.

Against this background there arises the question of the connection between the tannaitic exegesis of creation in the Divine Image and tannaitic esotericism. After all, man's creation in the Divine Image is the focal point of the description of creation in the Book of Genesis. Furthermore, two of the sages referred to in *Tosefta Hagigah* as having "entered *Pardes*" (i.e., engaged in mystical speculation) – namely, R. Akiva and Ben-Azzai – are the very same sages to whom the homilies referring to Imago Dei and diminution of the image are attributed in *Tosefta Yebamot* and parallel texts.[6] If we have succeeded in reconstructing the tannaitic understanding of the issue of *zelem*, have we also succeeded in extracting some of their approach to *Ma'aseh Bereshit*? Could it be that the iconic-theurgic conception of man created in the Divine image and of God who expands out to his image is connected to esoteric conceptions of the tannaim regarding *Ma'aseh Bereshit*?[7]

I have no substantial answer to this question apart from suggesting that the conclusions of this study may well be connected to the obscure tannaitic homilies regarding *Ma'aseh Bereshit*. Naturally, this suggestion requires further research.

[5] Ezekiel Chapter 1, 8, 10; see also Isa 1. Regarding the *Merkavah* in Talmudic literature, see also *m. Meg*. 4.1. On the disputes regarding the chapters included in *Ma'aseh Bereshit*, see B. Lifschitz, "Expounding the Work of Creation," 513–524.

[6] *t. Hag* 2.3–4 (p. 234). It bears mention that the sources referring to *zelem* in the *Tosefta* (and in the Bavli) *Yebamot* (Chapter 8) and the sources dealing with *Ma'aseh Bereshit* and *Ma'aseh Merkavah* in the Tosefta and in *Bavli Hagigah* share a common term "preaches well and does (not) act well." In *Tractate Yebamot* this expression is used regarding R. Eleazer b. Azariah and ben Azzai, who expound it in the context of *zelem*. In *Hagigah* it is used in relation to R. Eleazar b. Arach, who expounded in the matter of *Ma'aseh Merkavah*. To the best of my knowledge, the phrase does not appear anywhere else in the Talmudic literature.

[7] Possibly, the subject of *zelem* also connects between *Ma'aseh Bereshit* and *Ma'aseh Merkavah* because it pertains to the connection between the upper and lower worlds. The prohibitions of forbidden sexual relations may also relate to this, because their esoteric aspect concerns the way in which prohibited intercourse (*sitrei arayot*, *b. Hag* 11b) may result in the birth of bastards, harming God and "weakening Him." *Ma'aseh Merkavah* also involves Divine secrets, and *Ma'aseh Bereshit* alludes to the secrets of creation, the apex of which is the creation of man in God's image. The secrets of forbidden relations involve secrets pertaining to the proper or distorted replication of the image. See more on this in Chapter 9, n. 9.

Finally, the conclusions of this study invite further examination of the connection between the *zelem* conception and the unique character of Israel. This brings us back to the famous statement in *Mishnah Avot*, with which we began:

> He [Rabbi Akiva] used to say: Beloved is man, for he was created in the image [of God]; he was accorded a greater love, as he was created in the image, for it is written, "In the image of God did he make man" (Gen 9:6). Beloved are Israel, for they are called children of God; even greater love was accorded to them for they are called children of God, as it is stated: "You are children of the Lord your God."[8]

The major focus of this study is the first part of this dictum: "Beloved is man, for he was created in the Image." In the second part of the dictum the tanna infers that Israel is beloved to the Creator, based on the fact that they are referred to as "children of the Lord."

Are these two sections related? Is God's affection for man related to his affection for Israel, or are we confronted with two distinct propositions, sharing no common ground? In other words, how is the category of *zelem* ("image") related to that of "child"? Are they two separate adjectives, or are they connected? The question is further sharpened in light of the clear implication of this teaching: that the aspect of *zelem* is not just the legacy of man, but also the legacy of Israel. According to R. Akiva, are Israel called "children" because they (like all other human mortals) were "created in the image," or does the appellation "children" perhaps have another source?

Some scholars have asserted that there is a tension, perhaps even a conflict, between the idea of man's creation in God's image, which is essentially a universal idea, and the appellation of Israel as "children," which is premised on a particularistic conception.[9] Their view is that R. Akiva prefers the expression "children," which distinguishes the Jewish people, over the expression of *zelem*, which pertains to all of humankind. But in contrast to this approach, it seems to me that the two parts are neither contradictory nor mutually exclusive. The structure of this dictum and the textual flow create the clear impression of a substantial affinity among its component parts, and the "child" relationship flows naturally from its counterpart "image" and is fact premised on it. According to R. Akiva, Israel's uniqueness, by virtue of which they are referred to as the "children" of God, is premised on the fulfillment of the Torah and the commandments, in the sanctity embedded in them and in their similitude to God, who is their source. These factors are all anchored in the conception of man being in God's image.[10]

The title "child," which forms the focal point of the teaching's second part, is located on one and the same continuum as the title *zelem*. Numerous ancient

8 In *m. Avot* 3.14 according to the Farma manuscript. In the Kaufmann manuscript the words "as it states 'You are sons of the Lord your God'" appear in the margins of the page.

9 Cohen, *Be Fertile and Increase*, 113–114; Goshen-Gottstein, "The Body as Image," 188–189.

10 My remarks below are based on a study in which I am currently engaged, which is largely a continuation of this study.

sources, Talmudic and foreign, stress that the essence of the relationship of "child" (in the sense of "son") is based on his being an image of his father. This is also the basis of the representation of Israel as being the "children" of God. Rabbi Akiva's teaching attenuates the meaning of "children" in the context of the word *zelem*. The intention is that men – all men – are created in God's image. However, Israel are called "children" because they were designated to be the more perfect, fuller images of their Father in Heaven, and hence their affinity to God is more manifest.

What is it that makes Israel into a more striking semblance of God? It will be recalled that R. Akiva's concept of image focuses on man's concrete existence, by virtue of which it stresses the quasi-Divine features of man's body and of his personality embedded therein. However, man's characterization as an *eikonin* of God is not necessarily a fixed, unchanging state of being, insofar as he is exposed to diminution and corruption, as a result of which he requires maintenance and nurturing. Along with their focus on the integrity of the soul, many of the commandments are no less concerned with the integrity of the body, in guarding it and protecting it from defiling substances. These commandments are intended for the holiness that separates Israel (the children) from the other nations.

We thus find that, in tannaitic sources, the appellation of "child" is rooted in the performance of the commandments. When are Israel referred to as "children?" "When they fulfill the will of God." Another tannaitic source refers this state as being "when they have no blemish."[11] While the tannaim did not attempt to blur the interpersonal, unconditional connotation of the word "child," they made a point of emphasizing its dynamic, normative aspects, which involve the performance of the commandments. (It is interesting to note that in *Tractate Kiddushin*, R. Meir (!) stresses that "one way or the other they are called sons.")

The tannaitic conception of the commandments has its foundations in the concept of holiness. The tannaim repeatedly stress that man's sanctification by fulfilling God's commandments derives from God's holiness: "'You shall be holy for I am holy' (Lev 19:2). Just as I am holy so you will be holy; just as I am separate so you must be separate."[12] In the words of the tanna, Abba Shaul, on the above verse: "The king has a retinue, and what is its task? It is to emulate the king."[13] Man fulfills himself by the performance of the commandments, and by so doing emulates God. The sanctity attained through the performance of the commandments belongs to the category of holiness of God himself. Apparently, according to this tannaitic interpretation, *Parashat Kedoshim* (Leviticus 19) and the commandments included therein, whose motto is "You shall be Holy for I am Holy," is premised on the idea of man being in the image of God. The requirement to emulate God is based on the conception that he who emulates is in God's image. Israel's uniqueness, that distinguishes them from other nations,

[11] *Midrash Tannaim* 14.1 (p. 71), and R. Yehuda, in *Sifre Deuteronomy* 308 (p. 346), respectively.
[12] *Sifra, Shemini* 12, (228).
[13] *Sifra*, *Kedoshim* opening paragraph, p. 87.

and by virtue of which they are called "children," is the maintenance and nurturing of the image of God. In doing so not only do they sanctify themselves, but they also intensify the sanctity of God. In the language of the homily appearing at the beginning of *Sifra Kedoshim,* "If you sanctify yourselves I shall credit it to you as though you sanctified me . . . ."[14]

According to this approach, Israel's uniqueness has no relation to matters of essence or of race; rather, it is based upon action, acts, and lifestyle. Sanctity is not an innate, inborn quality but is acquired through action – the performance of commandments.[15] According to this understanding, the ability to sanctify is premised on man's basic state of being as "the image of God," a state of being common to the entire human race.

In the tannaitic understanding, the commandments are a form of *Imitatio Dei*, a view based on the conception of man (including Israel) as Imago Dei: "The royal retinue emulates the king" because its members are in the king's image. When they fulfill the commandments, Israel become sanctified, and in doing so emulate God. They are then referred to as "children," because like the child they became striking icons of God. In view of the iconic foundation in the *zelem* conception of these tannaim, it is easily understood how man's sanctification even adds holiness to God.[16]

[14] *Sifra*, ibid., p. 87.

[15] On this point the tannaim continue the approach adopted by the Holiness School in the Torah (along with the Priestly doctrine of Deuteronomy). See Knohl, *Sanctuary of Silence*, 173, n. 44.

[16] For another conception of Israel's uniqueness in Talmudic literature, apparently from the academy of R. Ishmael, see Hirshman, "Precious is Israel."

Bibliographical Abbreviations

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Antiquities	Josephus, R. Marcus (trans.), Loeb Classics (9 vols.), Cambridge, MA, 1963.
Bahir	*Sefer ha-Bahir*, ed. Daniel Abrams, Los Angeles, 1994.
Bavli Ket. with variant versions	Tractate *Ketuvot* with variant versions from manuscripts of the Talmud, with comparisons to citations from the Gemara and Talmudic literature, the Geonim, and Rishonim, ed. M. Hershler, published by the Israeli Institute for Talmud, Jerusalem, 1972.
Bavli Yeb. with variant versions	Tractate *Yebamot* with variant versions from manuscripts of the Talmud, with comparisons to citations from the Gemara and Talmudic literature, the Geonim, and Rishonim, ed. Rav. A. Lis, published by the Israeli Institute for Talmud, Jerusalem, 1972.
Beliefs and Opinions	*The Book of Beliefs and Opinions*, Rabbi Saadyah ben Yosef Piumi (translated into Hebrew – Y. Kapih), Jerusalem, 1970.
Deut. Rabbah	*Deuteronomy Rabbah*, ed. Sh. Lieberman (third edn, with additions and amendments), Jerusalem, 1974.
Encyclopaedia Biblica	*Encyclopaedia Biblica*, Jerusalem, 1978–1982.
Esther Rabbah	*Esther Rabbah* from *Midrash Rabbah* on the Torah and the Megillot, Vilna, 1887.
Exodus Rabbah	*Exodus Rabbah*, Warsaw, 1867.

Exodus Rabbah (Shinan)	*Exodus Rabbah*, Chapters 1–14, published according to the manuscript and together with variant versions, commentary and introduction by A. Shinan, Jerusalem–Tel Aviv, 1984.
Genesis Rabbah	*Genesis Rabbah*, ed. Y. Theodor and H. Albeck (second ed.), Jerusalem, 1965.
Guide	*Moses Maimonides, The Guide of the Perplexed.* Translated with an Introduction and Notes by Sh. Pines, Chicago, 1963.
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Hovot Ha-Levavot	*Duties of the Heart*, by Bachya ben Joseph ibn Paquda ; translated from the Arabic into Hebrew by Jehuda ibn Tibbon, with English translation by M. Hyamson, Jerusalem 1970
Jubilees	*Jubilees*, trans. by O. S. Wintermute, in: *The Old Testament Pseudepigrapha* , ed. J. H. Charlseworth, New York 1985, vol. 2, pp. 52–142.
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Lam. Rabbati	*Lamentations Rabbati*, Warsaw, 1887.
Lev. Rabbah	*Leviticus Rabbah*, ed. M. Margaliot, Jerusalem, 1953–1958.
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Midrash Tehillim	*Midrash Tehillim*, ed. S. Buber, Vilna, 1893.

Munich Manuscript	*Babylonian Talmud according to Munich Manuscript* (95). Fascimile edition, photstated and printed in Jerusalem by Sefer Publications, Jerusalem, 1977.
Nahmanides on the Torah	*Commentary of R. Moshe b. Nahman on the Pentateuch*, ed. C. D. Chavel, Jerusalem, 1964.
Num. Rabbah	*Numbers Rabbah*, *Vilna edition*, 1855.
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Pesikta De-Rav Kahana	*Pesikta De-Rav Kahana*, ed. D. Mandelbaum, New York, 1962.
Pesikta Rabbati	*Pesikta Rabbati*, ed. M. Ish Shalom, Vienna, 1880.
Philo	*Philo*, with an English translation by F. H. Colson and G. H. Whitaker. [The Loeb classical library] Cambridge Ma 1929–1962.
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Shir ha-Shirim Rabbah	*Shir ha-Shirim Rabbah*, Warsaw, 1864.
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Sifre Deuteronomy	*Sifre Deuteronomy*, ed. A. A. Finkelstein, New York, 1969.
Sifre Numbers	*Sifre Numbers*, ed. H. S. Horvitz, Leipsig, 1917.
Sifre Zutta Numbers	*Sifre Zutta, Numbers* ed. H. S. Horvitz, Leipsig, 1917.
Tanhuma (Buber)	*Midrash Tanhuma*, ed. S. Buber, Vilna, 1885.
Tanhuma (Yosef)	*Midrash Tanhuma* with *Etz Yosef* and *Anaf Yosef* commentaries, Jerusalem, 1972.
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Zohar	*Sefer Ha-Zohar*, ed. R. Margaliot (1–3), Jerusalem, 1978.

Journals

AB	*The Anchor Bible*
AJSReview	*AJSReview* (Association of Jewish Studies)
ANRW	Aufstieg und Niedergang der Romischen Welt
BA	*The Biblical Archaeologist*
DJD	*Discoveries in the Judaean Desert*
EI	*Eretz Israel, Archaeological, Historical and Geographical Studies*
EJ	*Encyclopaedia Judaica*
ER	*Encyclopaedia of Religion* (ed. M. Eliade, 1987)
HTR	*Harvard Theological Review*
HUCA	*Hebrew Union College Annual*
ICC	*International Critical Commentary*
IDB	*International Dictionary of the Bible*
IEJ	*Israel Exploration Journal*
JAOS	*Journal of the American Oriental Society*
JBL	*Journal of Biblical Literature*
JJS	*Journal of Jewish Studies*
JJTP	*Journal of Jewish Thought and Philosophy*
JQR	*Jewish Quarterly Review*
JSJ	*Journal for the Study of Judaism*
JTS	*The Journal of Theological Studies*
MGWJ	*Monatschrift für Geschichte und Wissenschaft des Judentums*
PAAJR	*Proceedings of the American Academy for Jewish Research*
TDNT	*Theological Dictionary of the New Testament*, ed. C. Kittel, Grand Rapids, MI, 1964 (repr. 1993)
TDOT	*Theological Dictionary of the Old Testament*, ed. G. J. Botterweck and H. Ringgern, Grand Rapids, MI, 1989

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Index of Sources

Index of Names

Index of Subjects